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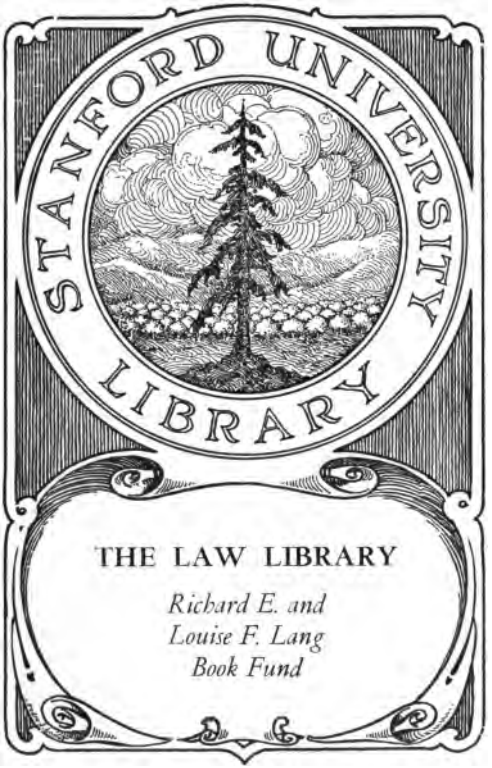

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THE

TRIAL

OF

ROBERT THOMAS CROSSFIELD,

FOR

High Treason,

AT THE

SESSIONS HOUSE IN THE OLD BAILEY,

ON

Wednesday the Eleventh, and Thursday the Twelfth of May, 1796.

TAKEN IN SHORT-HAND,

By JOSEPH GURNEY.

LONDON:

SOLD BY MARTHA GURNEY, BOOKSELLER, HOLBORN-HILL.

1796.

[*Entered at Stationers Hall.*]

THE

TRIAL

OF

ROBERT THOMAS CROSSFIELD

FOR

HIGH TREASON.

ON the 31ſt of Auguſt, 1795, Robert Thomas Croſsfield was apprehended at Fowey in Cornwall, ſent up to London, and was committed by the Privy Council to the Tower.

On the 14th of January, 1796, the Grand Jury for the City of London, ſitting at the Seſſions Houſe in the Old Bailey, returned a true Bill againſt Robert Thomas Croſsfield, Paul Thomas Le Maitre, John Smith and George Higgins, for High Treaſon.

On the 15th of January Paul Thomas Le Maitre, John Smith, and George Higgins ſurrendered themſelves in Court, and were committed to Newgate.

On the 20th of January, Mr. Gurney was aſſigned by the Court, of Counſel for Paul Thomas Le Maitre, John Smith and George Higgins.

On the 16th of February, Mr. White, Solicitor to the Treaſury, delivered to each of the priſoners a copy of the Indictment, a liſt of the Jurors impannelled by the Sheriffs, and a liſt of the Witneſſes to be produced by the Crown, for proving the ſaid Indictment.

On the 17th of February, Mr. Adam was aſſigned by the Court, of Counſel for Paul Thomas Le Maitre, John Smith and George Higgins.

On the 20th of February, Mr. Adam and Mr. Gurney were assigned of Counsel for Robert Thomas Crosfield.

On the 5th of April, Robert Thomas Crosfield was removed by Habeas Corpus from the Tower to Newgate.

At the Session on the 6th of April the prisoners were arraigned on the following indictment, and severally pleaded Not Guilty.

CAPTION.

CAPTION. [London]—At the General Seſſion of Oyer and Terminer of our Lord the King holden for the City of London at Juſtice Hall in the Old Bailey within the Pariſh of Saint Sepulchre in the Ward of Farringdon Without in London aforeſaid on Wedneſday the thirteenth day of January in the thirty-ſixth year of the reign of our Sovereign Lord George the Third King of Great Britain &c. before William Curtis Eſquire Mayor of the City of London Sir Archibald Macdonald Knight Chief Baron of our ſaid Lord the King of His Court of Exchequer John Heath Eſquire one of the Juſtices of our ſaid Lord the King of his Court of Common Pleas Sir Alexander Thomſon Knight one of the Barons of our ſaid Lord the King of his ſaid Court of Exchequer Richard Clarke Eſquire William Pickett Eſquire Paul Le Meſurier Eſquire Stephen Langſton Eſquire Aldermen of the ſaid City John Silveſter Eſquire and others their Fellow Juſtices of our ſaid Lord the King aſſigned by Letters Patent of our ſaid Lord the King made under the Great Seal of our ſaid Lord the King of Great Britain To the ſame Juſtices above named and others or any two or more of them directed to inquire more fully the truth by the oath of good and lawful men of the City of London and by other ways means and methods by which they ſhall or may better know as well within Liberties as without by whom the truth of the matter may be better known of all treaſons miſpriſions of treaſon inſurrections rebellions counterfeitings clippings waſhings falſe coinings and other falſities of the money of Great Britain and other Kingdoms or Dominions whatſoever and of all murthers felonies manſlaughters killings burglaries rapes of women unlawful meetings conventicles unlawful uttering of words aſſemblies miſpriſions confederacies falſe allegations treſpaſſes riots routs retenſions eſcapes contempts falſities negligences concealments maintenances oppreſſions champartys deceipts and all other evil doings offences and injuries whatſoever and alſo the acceſſaries of them within the City aforeſaid (as well within Liberties as without) by whomſoever and in what manner ſoever done committed or perpetrated and by whom or to whom when how and after what manner and

of all other articles and circumſtances concerning the premiſes and every of them or any of them in any manner whatſoever and the ſaid treaſons and other the premiſes to hear and determine according to the laws and cuſtoms of England by the oath of Henry Rutt William Arthur Adam Dennis William Hunter Thomas Knott Joſhua Knowles Alexander Lean Thomas Ayres John Tomes Charles Aldridge John Guy Thomas Fellows James Stafford John Beck Charles Schofield Joſeph Aldridge and William Kine good and lawful men of the ſaid City now here ſworn and charged to enquire for our ſaid Lord the King for the body of the ſaid City It is preferred in manner and form following (that is to ſay)

INDICTMENT. [London to wit]—The Jurors for our Lord the King upon their oath preſent that Robert Thomas Croſsfield late of London Gentleman Paul Thomas Le Maitre late of the Parish of Saint Ann Soho in the County of Middleſex watch caſe maker John Smith late of Weſtminſter in the County of Middleſex aforeſaid bookſeller and George Higgins late of London druggiſt being ſubjects of our ſaid Lord the King not having the fear of God in their hearts nor weighing the duty of their allegiance but being moved and ſeduced by the inſtigation of the devil as falſe traitors againſt our ſaid Lord the King their ſupreme true lawful and undoubted Lord and wholly withdrawing the cordial love and true and due obedience which every true and faithful ſubject of our ſaid Lord the King ſhould and of right ought to bear towards our ſaid Lord the King on the firſt day of September in the thirty-fourth year of the reign of our Sovereign Lord George the Third by the Grace of God King of Great Britain France and Ireland Defender of the Faith &c. and on divers other days and times as well before as after at London aforeſaid (to wit) in the parish of Saint Dunſtan in the Weſt in the Ward of Farringdon Without maliciouſly and traitorouſly with force and arms &c. did compaſs imagine and intend to bring and put our ſaid Lord the King to death

And to fulfil perfect and bring to effect their moſt evil and wicked treaſon and treaſonable compaſſing and imagination aforeſaid they the ſaid Robert Thomas Croſsfield Paul Thomas Le

Maitre John Smith and George Higgins as ſuch falſe traitors as aforeſaid on the ſaid firſt day of September in the thirty-fourth year aforeſaid and on divers other days and times as well before as after at London aforeſaid in the pariſh of Saint Dunſtan aforeſaid and Ward aforeſaid did together with divers other falſe traitors whoſe names are to the ſaid Jurors unknown with force and arms maliciouſly and traitorouſly conſpire combine conſult conſent and agree to procure make and provide and cauſed to be procured made and provided a certain inſtrument for the purpoſe of diſcharging an arrow and alſo a certain arrow to be charged and loaded with poiſon with intent to diſcharge and cauſe to be diſcharged the ſaid arrow ſo charged and loaded with poiſon from and out of and by means of the ſaid inſtrument at and againſt the perſon of our ſaid Lord the King and thereby and therewith to kill and put to death our ſaid Lord the King

And further to fulfil perfect and bring to effect their moſt evil and wicked treaſon and treaſonable compaſſing and imagination aforeſaid they the ſaid Robert Thomas Croſsfield Paul Thomas Le Maitre John Smith and George Higgins as ſuch falſe traitors as aforeſaid on the ſaid firſt day of September in the thirty-fourth year aforeſaid at London aforeſaid in the Pariſh of Saint Dunſtan aforeſaid in the Ward aforeſaid with force and arms maliciouſly and traitorouſly did employ and engage and cauſe to be employed and engaged one John Hill to make and faſhion divers (to wit) two pieces of wood to be uſed as models for the making and forming certain parts of the ſaid inſtrument from and out of and by means of which the ſaid arrow was ſo intended to be diſcharged at and againſt the perſon of our ſaid Lord the King as aforeſaid for the traitorous purpoſe aforeſaid and did then and there deliver and cauſe to be delivered to the ſaid John Hill a certain paper with certain drawings thereon drawn and deſigned as inſtructions and directions for making ſuch models.

And further to fulfil perfect and bring to effect their moſt evil and wicked treaſon and treaſonable compaſſing and imagination aforeſaid they the ſaid Robert Thomas Croſsfield Paul Thomas Le Maitre John Smith and George Higgins as ſuch falſe traitors as aforeſaid on the ſaid firſt day of September in

the thirty-fourth year aforeſaid and on divers other days and times as well before as after with force and arms at London aforeſaid in the pariſh of Saint Dunſtan aforeſaid and Ward aforeſaid did meet conſult and deliberate among themſelves and together with divers other falſe traitors whoſe names are to the ſaid Jurors unknown of and concerning their ſaid intended traitorous killing and putting to death of our ſaid Lord the King by the means and inſtrument aforeſaid and how and where ſuch killing and putting to death might be moſt readily and effectually accompliſhed

And further to fulfil perfect and bring to effect their moſt evil and wicked treaſon and treaſonable compaſſing and imagination aforeſaid they the ſaid Robert Thomas Croſsfield Paul Thomas Le Maitre John Smith and George Higgins as ſuch falſe traitors as aforeſaid on the ſaid firſt day of September in the thirty-fourth year aforeſaid at London aforeſaid in the pariſh of Saint Dunſtan aforeſaid and Ward aforeſaid with force and arms malicioufly and traitorouſly did employ and engage and cauſe to be employed and engaged one Thomas Upton to aſſiſt in making the ſaid inſtrument from and out of and by means of which the ſaid arrow was ſo intended to be diſcharged at and againſt the perſon of our ſaid Lord the King as aforeſaid for the traitorous purpoſe aforeſaid and did then and there for that purpoſe deliver and cauſe to be delivered to the ſaid Thomas Upton a certain paper with certain figures and drawings thereon drawn and deſigned as inſtructions and directions for making ſuch inſtrument and alſo certain pieces to wit two pieces of wood as models for the making and forming certain parts of the ſaid inſtrument

And further to fulfil perfect and bring to effect their moſt evil and wicked treaſon and treaſonable compaſſing and imagination aforeſaid they the ſaid Robert Thomas Croſsfield Paul Thomas Le Maitre John Smith and George Higgins as ſuch falſe traitors as aforeſaid on the ſaid firſt day of September in the thirty-fourth year aforeſaid at London aforeſaid in the pariſh of Saint Dunſtan aforeſaid and Ward aforeſaid with force and arms malicioufly and traitorouſly did deliver and cauſe to be delivered to the ſaid Thomas Upton a certain metal tube to be uſed by him the ſaid

Thomas

Thomas Upton in the making and forming of the ſaid inſtrument from and out of and by means of which the ſaid arrow was ſo intended to be diſcharged at and againſt the perſon of our ſaid Lord the King as aforeſaid for the traitorous purpoſe aforeſaid and as a part of ſuch inſtrument

And further to fulfil perfect and bring to effect their moſt evil and wicked treaſon and treaſonable compaſſing and imagination aforeſaid they the ſaid Robert Thomas Croſsfield Paul Thomas Le Maitre John Smith and George Higgins as ſuch falſe traitors as aforeſaid on the ſaid firſt day of September in the thirty-fourth year aforeſaid and on divers other days and times as well before as after at London aforeſaid in the pariſh of Saint Dunſtan aforeſaid and Ward aforeſaid did together with divers other falſe traitors whoſe names are to the ſaid Jurors unknown with force and arms maliciouſly and traitorouſly conſpire combine conſult conſent and agree to procure make and provide and cauſe to be procured made and provided a certain other inſtrument with intent thereby and therewith and by means thereof to kill and put to death our ſaid Lord the King

And further to fulfil perfect and bring to effect their moſt evil and wicked treaſon and treaſonable compaſſing and imagination aforeſaid they the ſaid Robert Thomas Croſsfield Paul Thomas Le Maitre John Smith and George Higgins as ſuch falſe traitors as aforeſaid on the ſaid firſt day of September in the thirty-fourth year aforeſaid at London aforeſaid in the pariſh of Saint Dunſtan aforeſaid in the ward aforeſaid with force and arms maliciouſly and traitorouſly did employ and engage and cauſe to be employed and engaged one John Hill to make and faſhion divers to wit two pieces of wood to be uſed as models for the making and forming certain parts of the ſaid laſt mentioned inſtrument for the traitorous purpoſe laſt aforeſaid and did then and there deliver and cauſe to be delivered to the ſaid John Hill a certain other paper with certain drawings thereon drawn and deſigned as inſtructions and directions for making ſuch models

And further to fulfil perfect and bring to effect their moſt evil and wicked treaſon and treaſonable compaſſing and imagination aforeſaid they the ſaid Robert Thomas Croſsfield Paul

Thomas Le Maitre John Smith and George Higgins as ſuch falſe traitors as aforeſaid on the ſaid firſt day of September in the thirty-fourth year aforeſaid and on divers other days and times as well before as after with force and arms at London aforeſaid in the pariſh of Saint Dunſtan aforeſaid and ward aforeſaid did meet conſult and deliberate among themſelves and together with divers other falſe traitors whoſe names are to the ſaid jurors unknown of and concerning their ſaid intended traitorous killing and putting to death of our ſaid Lord the King by the means and inſtrument laſt aforeſaid and how and where ſuch killing and putting to death might be moſt readily and effectually accomplished

And further to fulfil perfect and bring to effect their moſt evil and wicked treaſon and treaſonable compaſſing and imagination aforeſaid they the ſaid Robert Thomas Croſsfield Paul Thomas Le Maitre John Smith and George Higgins as ſuch falſe traitors as aforeſaid on the ſaid firſt day of September in the thirty-fourth year aforeſaid at London aforeſaid in the pariſh of Saint Dunſtan aforeſaid and ward aforeſaid with force and arms maliciouſly and traitorouſly did employ and engage and cauſe to be employed and engaged one Thomas Upton to aſſiſt in making the ſaid laſt mentioned inſtrument for the traiterous purpoſe laſt aforeſaid and did then and there for that purpoſe deliver and cauſe to be delivered to the ſaid Thomas Upton a certain other paper with certain figures and drawings thereon drawn and deſigned as inſtructions and directions for making ſuch laſt mentioned inſtrument and alſo certain pieces to wit two pieces of wood as models for the making and forming certain parts of the ſaid laſt mentioned inſtrument

And further to fulfil perfect and bring to effect their moſt evil and wicked treaſon and treaſonable compaſſing and imagination aforeſaid they the ſaid Robert Thomas Croſsfield Paul Thomas Le Maitre John Smith and George Higgins as ſuch falſe traitors as aforeſaid on the ſaid firſt day of September in the thirty-fourth year aforeſaid at London aforeſaid in the pariſh of Saint Dunſtan aforeſaid and ward aforeſaid with force and arms maliciouſly and traitorouſly did deliver and cauſe to be

delivered

delivered to the ſaid Thomas Upton a certain metal tube to be uſed by him the ſaid Thomas Upton in the making and forming of the ſaid laſt mentioned inſtrument for the traitorous purpoſe laſt aforeſaid and as a part of ſuch laſt mentioned inſtrument againſt the duty of the allegiance of them the ſaid Robert Thomas Croſsfield Paul Thomas Le Maitre John Smith and George Higgins againſt the peace of our ſaid Lord the King his crown and dignity and againſt the form of the ſtatute in that caſe made and provided.

It appearing to the Court that the proper officer had not ſummoned the Jury in time for the priſoners to take their trial at the preſent Seſſion, the trial was poſtponed to the next Seſſion.

SESSION

SESSION HOUSE IN THE OLD BAILEY.

Wednesday, May the 11th, 1796.

PRESENT,

Lord Chief Juſtice EYRE;
Mr. Juſtice GROSE;
Mr. RECORDER;

And others his Majeſty's Juſtices, &c.

Counſel for the Crown.	*Counſel aſſigned for the Priſoner.*
Mr. ATTORNEY GENERAL,	Mr. ADAM,
Mr. SOLICITOR GENERAL,	Mr. GURNEY,
Mr. LAW,	
Mr. GARROW,	*Aſſiſtant Counſel.*
Mr. WOOD,	Mr. MOORE,
Mr. FIELDING,	Mr. MACINTOSH.
Mr. ABBOT.	

Solicitor.	*Solicitors.*
JOSEPH WHITE, Eſq; Solicitor for the affairs of his Majeſty's Treaſury.	Meſſrs. FOULKES and COOKE, Hart Street, Bloomſbury Square.

Mr. Attorney General ſaid, that, as he underſtood the priſoners meant to ſeparate their challenges, he propoſed to proceed in the trial of Croſsfield firſt.

Robert

Robert Thomas Croſsfield ſet to the bar.

[*Mr. Shelton, the Clerk of the Arraigns, called over the Pannel.*]

Hilton Wray, Eſq. challenged by the priſoner.

John Anderſon, Merchant, not a freeholder in the city of London to the value of £.10 a year.

John Vincent Gandolfi, Merchant, challenged by the priſoner.

Thomas Dunnage, Merchant, excuſed on account of age.

Peter Pope, Eſq. excuſed on account of age.

Abraham Favene, Merchant, excuſed on account of illneſs.

John Naylor, Merchant, challenged by the priſoner.

Joſeph Norville, Merchant, not a freeholder.

David Jones, Merchant, challenged by the crown.

Thomas Latham, Merchant, not properly deſcribed in the pannel.

John Mair, Merchant, not a freeholder.

Sir Walter Rawlinſon, Banker, excuſed on account of illneſs.

John Henry Schneider, Merchant, challenged by the priſoner.

Claude Scott, Corn-factor, challenged by the priſoner.

Rowland Stephenſon, Banker, excuſed on account of deafneſs.

James Atkinſon, Merchant, challenged by the priſoner.

Richard Heatley, Merchant, not a freeholder.

Duncan Hunter, Merchant, challenged by the crown.

William Axe, Stock-broker, not properly deſcribed in the pannel.

William Armand, Merchant, not properly deſcribed in the pannel.

John Greenſide, Corn-factor, ſworn.

William Ward, Coal-factor, challenged by the crown.

John Preſtwidge, Hop Merchant, not a freeholder.

Thomas Fothergill, Corn-factor, challenged by the priſoner.

Henry Foudrinier, Stationer, challenged by the priſoner.

Francis Barſtow Nixon, Merchant, ſworn.

Nathaniel Braſſey, Banker, excuſed on account of illneſs.

William

William Morley, ſen. Corn-factor, not a houſeholder in the city of London.

Lewis Teſſier, Merchant, challenged by the priſoner.

John Read, Coal-factor, not a houſeholder.

Robert Reeve, Corn-factor, challenged by the crown.

Paul Agutter, Eſq. excuſed on account of age.

James Brander, Merchant, not a freeholder.

Samuel Brandram, Merchant, challenged by the priſoner.

Charles Hamerton, Eſq. not properly deſcribed in the pannel.

William Hallier, Merchant, challenged by the priſoner.

John Willis, Gentleman, excuſed on account of illneſs.

William Walker, Sugar Baker, ſworn.

David Pugh, Grocer, not a freeholder.

Edward Simeon, Merchant, challenged by the priſoner.

Henry Stokes, Merchant, not a houſeholder.

Percival North, Grocer, challenged by the crown.

Richard Lawrence, Sugar Baker, not a freeholder.

Henry Mitton, Banker, not a houſeholder.

Henry Turner, Merchant, challenged by the priſoner.

Edward Brockſopp, Corn-factor, challenged by the priſoner.

Alexander Black, Merchant, ſworn.

William Robinſon, Merchant, challenged by the priſoner.

William Shone, Wine Merchant, ſworn.

Daniel Shirley, Wine Merchant, not a freeholder.

John Garratt, Teabroker, challenged by the priſoner.

Thomas Higgins, Grocer, not a freeholder.

John Hammet, Banker, challenged by the priſoner.

William M'Andrew, Orange Merchant, not properly deſcribed in the pannel.

James Bell, Sugar Baker, not a freeholder.

Miles Stringer, Spice Merchant, excuſed on account of illneſs.

John Sherer, Merchant, challenged by the priſoner.

Joſeph Stonard, Corn-factor, challenged by the crown.

Samuel Ibbetſon, Mercer, challenged by the priſoner.

Henry Iſherwood, Paper-maker, not a freeholder.

Windham Knatchbull, not a houſeholder.

William

William Afcough, Undertaker, challenged by the crown.

John Addiſon, Linen Draper, challenged by the priſoner.

Thomas Wright, Soap-boiler, not properly deſcribed in the liſt delivered to the priſoner.

Arthur Windus, Coachmaker, ſworn.

Richard Clarke, Coach-maſter, not properly deſcribed in the pannel.

William Purdy, Broker, challenged by the priſoner.

Edward Penny, Glover, not a houſeholder.

Michael Eaton, Hoſier, challenged by the crown.

Timothy Fiſher, Linen Draper, not a houſeholder.

Edward Newberry, Bricklayer, challenged by the priſoner.

William Norris, Maſon, ſworn.

Thomas Loveland, Baker, challenged by the priſoner.

William Lynes, Warehouſeman, excuſed on account of illneſs.

William Gofling, Carpenter, ſworn.

Benjamin Hanſon, Orange Merchant, not a freeholder.

James Tyers, Sugarbroker, not a freeholder.

Henry Goldfinch, Hatter, challenged by the priſoner.

Henry Thomas Avery, Currier, excuſed on account of illneſs.

Nicholas Browning, Baker, challenged by the priſoner.

John Blades, Glaſſman, not a freeholder.

John Rowbuck, Broker, not properly deſcribed in the pannel.

Edward Jackſon, Mans Mercer, not a freeholder.

Joſeph Warner, Grocer, challenged by the priſoner.

Thomas Whipham, Silverſmith, excuſed on account of illneſs.

John Crutchfield, Oilman, challenged by the priſoner.

William Crutchfield, Oilman, challenged by the priſoner.

Daniel Pinder, Maſon, ſworn.

Henry Nettleſhip, Gent. not a Freeholder.

James Lyon, Lighterman, challenged by the priſoner.

William Leach, Vintner, not properly deſcribed in the pannel.

John Turner, Linen Draper, challenged by the priſoner.

William Humphreys, Senior, Grocer, challenged by the priſoner,

Anthony

Anthony Brown, Fishbroker, excused on account of age.
Walter Brind, Silversmith, excused on account of age.
Christopher Smith, Wine Merchant, challenged by the crown.
Richard Fisher, Haberdasher, not a freeholder.
Thomas Ovey, Hatter, challenged by the crown.
John Mackenzie, Oilman, challenged by the prisoner.
Thomas Jeffries, Linen Draper, one of the people called Quakers.
William Parker, Glassman, excused on account of illness.
Thomas Abbott Green, Silversmith, not a freeholder.
Walter West, Ironmonger, challenged by the prisoner.
Benjamin White, Bookseller, sworn.
Stephen Adams, Silversmith, excused on account of illness.
Andrew Abbott, Potter, not a freeholder.
John Reid, Distiller, sworn.
Phillip Rundle, Goldsmith, challenged by the crown.
William Collier, Gent. challenged by the prisoner.
John Coe, Taylor, sworn.

THE JURY.

John Greenside,	William Norris,
Francis Barstow Nixon,	William Gosling,
William Walker,	Daniel Pinder,
Alexander Black,	Benjamin White,
William Shone,	John Reid,
Arthur Windus,	John Coe.

The Clerk of the Arraigns charged the Jury with the Prisoner in the usual form.

The Indictment was opened by Mr. ABBOT.

MR. ATTORNEY GENERAL.

May it pleaſe your Lordſhip,
Gentlemen of the Jury,

In the diſcharge of the very painful duty, which belongs to the ſituation which I hold, I am called upon this day to addreſs you with reference to a caſe of a moſt ſerious nature, whether it is conſidered with regard to the public, or the priſoner, who ſtands at the bar.—Gentlemen, the indictment, which you have heard read, charges the priſoner with the higheſt offence known to the law of our Country, and it charges the priſoner with the moſt aggravated ſpecies of that higheſt offence.—It charges him with compaſſing and imagining the death of the King, and with having, for the purpoſe of carrying that imagination into execution, prepared the means of deſtroying the perſon of the Sovereign.

Gentlemen, I ſhall have very little occaſion, in the courſe of what I have to offer to your attention, to ſay much to you upon the law of this particular caſe; I ſhall ſtate it to you in the words of a great judge, a man attached unqueſtionably to the genuine principles of this Conſtitution, whoſe name has long been revered, and will continue to be revered whilſt the Conſtitution of the Country itſelf ſhall endure. I mean the late Mr. Juſtice Foſter—He ſtates the ſtatute of the 25th Edward III. upon which this indictment is framed, and which you probably will hear read and commented upon by great modern living authorities: he ſtates the ſtatute in theſe words—"When "a man doth compaſs or imagine the death of our Lord the "King, and thereof be upon ſufficient proof attainted of open "deed by people of his own condition."—He ſtates that in the caſe of the King, this ſtatute of 25th Edward III. has with great propriety retained the rule that the will is to be taken for

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the deed. With respect to homicide in the case of individuals, the law of this Country once was, that even as to them the will should be taken for the deed: that law hath been altered in the case of private individuals; but it remains unchanged with respect to the Sovereign of the Country, and the reason why the law hath been continued, as it anciently was, with respect to the King, is stated in the book which I have been reading to you, as follows: "The principle upon which this is founded is "too obvious to need much enlargement: the King is consi- "dered as the head of the body politic, and the members of that "body are considered as united and kept together by a political "union with him, and with each other: his life cannot in the "ordinary course of things be taken away by treasonable prac- "tices without involving a nation in blood and confusion: con- "sequently every stroke levelled at his person is, in the ordi- "nary course of things, levelled at the public tranquillity. The "law, therefore, tendered the safety of the King with an "anxious concern, and, if I may use the expression, with a "concern bordering upon jealousy. It considereth the wicked "imaginations of the heart to be of the same degree of guilt as "if carried into actual execution from the moment." (And I would beg your attention, Gentlemen, to this passage:) "From "the moment *that measures appear to have been taken to render "them effectual.*"

Gentlemen, God alone can read the heart of man: and the legislature has, therefore, insisted upon this, in every trial between the King and a prisoner indicted, that he shall be attainted of *open deed* by people *of his condition:* that is to say, that some measures shall be taken to effectuate that evil imagination of the heart, some fact shall be done, or attempted to be done, in order to prove to man's judgment that that conception, and that imagination did enter into the man's heart. This measure, proof of which is made necessary by the law, is ordinarily known by the name of an overt act, and every indictment for Treason, as you will hear, must charge that the party compassed and imagined the death of the King, and then it must state, upon the face of it, those circumstances and facts, which are the measures,

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by which the profecutor inſiſts that the party has diſcloſed that traitorous compaſſing and imagination of his heart.

Gentlemen, the preſent indictment ſpecifies ſeveral ſuch overt acts. With reſpect to many of them, conſpiracy with others is of the eſſence of them—With reſpect to many others of them they are ſo framed that, if this priſoner is alone guilty, the circumſtance that he is the ſole perſon to whom, upon that ſuppoſition, guilt could be imputed will be no objection to his being found guilty, if the juſtice of the caſe, upon a due attention to the circumſtances of the caſe before a Jury of his country, as affecting him alone, requires that he ſhall be convicted.—I ſay that circumſtance—that he is, in this way of putting the caſe, the only perſon guilty, will form no objection to his conviction.

Gentlemen, I ſtate no more upon the law of the caſe but to add a ſingle word to what I have already mentioned, and that is this obſervation—That if a Jury, and to this I would humbly beg the attention of the Court, as well as your attention—that if a Jury ſhall be ſatisfied that the meaſures, which were taken by the perſon indicted, were meaſures in his intention calculated to the end of deſtroying the King, in his idea effectual for the purpoſe intended, it cannot be a queſtion which ought to entangle your conſciences at all, whether thoſe meaſures could have effectually executed the purpoſe with reference to which they were taken.

Gentlemen, I have ſtated to you that the offence with which the priſoner is charged, is the higheſt known to the law of England.—I have ſtated to you that it makes the party, in the caſe of the King, anſwerable for the intention demonſtrated by an overt act to the ſame extent as that, in which he would be reſponſible for the actual execution of that act in the caſe of a private perſon.—When I have ſtated that, I am alſo to add, that the Conſtitution of the Country has provided more ſecurity for the perſon accuſed in the caſe of Treaſon, than it has provided for any party, who is the object of accuſation in any other caſe known to the law of England. It has provided in ancient times many of theſe ſecurities: it has provided many

of theſe ſecurities in times to which the legiſlature which ordained them did not think proper practically to apply thoſe proviſions, which they were enacting for the defence of their poſterity, or ſuch of their poſterity, as ſhould be accuſed of ſuch offences. In the caſe of murder, one of the higheſt offences known to the law of England, the party may be convicted upon the evidence of a ſingle witneſs: he meets in the Court, where he is tried, the Jury, whoſe names are at that moment firſt known to him; he ſees in that court for the firſt time the witneſſes, upon whoſe teſtimony the deliverance is to be made between him and the Country; to that moment he may be, and he generally is, ignorant even of the names of thoſe witneſſes; and one witneſs credited will convict him. Our anceſtors have provided otherwiſe in the caſe of Treaſon; they have required, and it is my duty ſo to ſtate it to you, that the proof ſhould not only be ſuch, as ſhould ſatisfy the minds of a Jury of the guilt of the priſoner, but that it muſt be formal proof too, ſuch as the law requires; that is, if an individual to whom every one of you ſhould be diſpoſed to give the utmoſt credit, upon whoſe veracity you would pledge your own lives, if an individual witneſs ſhall ſpeak to a ſingle fact, though you may believe that witneſs, you cannot convict the priſoner; there muſt be in Treaſon two witneſſes to convict the priſoner; at leaſt one witneſs to prove one overt act laid in the indictment, and another witneſs to prove another overt act of the ſame Treaſon laid; that is, there need not be two witneſſes to each overt act, but one witneſs to one overt act, and another to another overt act are required, and are allowed by the law to be ſufficient witneſſes to convict in a caſe of Treaſon.

Gentlemen, the individual accuſed meets the accuſation in the face of his Country, alſo under circumſtances, which form a great protection to him, which I will ſtate to you preſently in the words of the ſame great Judge, whoſe authority I have before cited to you, which do in ſome degree endanger public juſtice; and I will ſtate to you diſtinctly, why I beg your attention to his words upon this part of the caſe. Gentlemen, the

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law has required, that in the cafe of Treafon, the prifoner fhould have his indictment for a given number of days before he is called upon to plead to it.—It likewife requires that at the fame time, that a copy of the indictment is given to him, a lift of his Jurors fhall be given to him, and that a lift of the witneffes, who are to be produced in order to eftablifh the charge, fhall be put into his hand. The profecutor, therefore, meets a perfon accufed of this offence in this fituation—a fituation new in the law of England till a very late period. I think the trial of Lord George Gordon was the firft, which, in the hiftory of this Country, admitted the application of the ftatute of Queen Anne, with reference to the point, upon which I am now addreffing you, for the legiflature, that paffed this act, did not venture to apply the provifions, which I have laft ftated to the Country, fituated as the Country then was, but poftponed the application of them till a period, which did not arrive, I think, till about twenty years ago.

Mr. Juftice Fofter, writing upon this ftatute before thefe provifions took place, ftates himfelf thus—" The furnifhing " the prifoner with the names, profeffions, and places of abode " of the Witneffes and Jury, fo long before the trial, may " ferve many bad purpofes, which are too obvious to be men- " tioned: one good purpofe, and but one it may ferve: it giveth " the prifoner an opportunity of informing himfelf of the cha- " racter of the Witneffes and Jury: but this fingle advantage " will weigh very little in the fcale of juftice or found policy, " againft the many bad ends which may be anfwered by it. If " it weigheth any thing in the fcale of juftice, the Crown is " entitled to the fame opportunity of fifting the character of the " prifoners witneffes."

Gentlemen, with refpect to this matter of the witneffes, we meet to day to try a caufe, where the prifoner has been in poffeffion of the names of all that can be produced, in order to fupport the indictment; while, at this moment, the names of thofe, who are to fupport the defence, although given in to an officer of the Court, are very properly, with a view to do juftice to the intention of the legiflature, withheld from thofe

who are to profecute. Gentlemen, I mention this circumſtance for the purpoſe only of deſiring your attention to an obſervation which I am now about to ſtate to you, in a caſe of the extraordinary nature, the circumſtances of which I have to detail to you. It may poſſibly occur that I may be obliged to call witneſſes in this caſe, who may be unwilling enough even to ſtate the truth to you upon this ſubject. You will give, I am perſuaded you will, that attention, which the policy and ſpirit of ſuch proviſions, as thoſe which I have mentioned, muſt require from a Jury.—I mean a jealous and anxious attention to the teſtimony, and the nature of the teſtimony, which every witneſs, on every ſide, in this important buſineſs, ſhall lay before your conſciences, remembering that the Country and an individual meet together, under theſe diſadvantages which I have been ſtating.

Gentlemen, ſome of the overt acts, ſtated in this indictment, charge the priſoner with conſpiring with the other parties named in it, Paul Thomas Le Maitre, John Smith, and George Higgins, to procure and provide a certain inſtrument for the purpoſe of diſcharging an arrow, and likwiſe an arrow to be charged and loaded with poiſon, with intent to diſcharge, and cauſe to be diſcharged the ſame arrow, by means of the inſtrument, againſt the King's perſon, and thereby to kill him. The next overt act is, that the priſoner employed a perſon, of the name of Hill, to make two pieces of wood to be uſed as models, for the making and forming certain parts of the ſaid inſtrument, for the traitorous purpoſe laſt aforeſaid, and did deliver to him a certain paper with certain drawings thereon, drawn and deſigned as inſtructions and directions for making ſuch models. There are likewiſe charged conſultations among the parties, and the employment of a man of the name of Upton, to whom this paper was delivered, for the purpoſe of forwarding the project, and the delivering to him of a metal tube, which was to be part of the inſtrument. And then the indictment charges again the ſame overt acts, leaving out the fact of the conſultation about, and the conſtruction of the arrow charged with poiſon, with intent to kill the King by means of the arrow;

but

but charging the fact of the fabrication of the inſtrument or air gun, for the purpoſe of diſcharging it, as it might be diſcharged againſt the perſon of the King, without making the poiſoned arrow part of the contents to be diſcharged.

Gentlemen, before I ſtate to you what I ſhall be able to do without employing a great deal of your time and attention in this caſe, I mean the circumſtances of it, you will give me leave to ſtate, very ſhortly, what has paſſed relative to this matter, before I had the honour of addreſſing you impannelled in that ſeat.—There was a perſon of the name of Upton, whoſe name occurs upon this indictment, and whoſe name you will hear very frequently in the courſe of this trial, who was a mechanic, that lived in Bell-yard, near Temple Bar, who gave an information to the higheſt magiſtrates of this Country, I mean his Majeſty's Privy Council, a conſiderable time ago, in which he diſtinctly charged himſelf, the priſoner at the bar, and other perſons, whoſe names occur upon this record with the offence, the charge relative to which you are this day to determine upon.

Gentlemen, I before ſtated to you that the law of England requires two witneſſes in the caſe of High Treaſon; they muſt be two credible perſons, and one ſhould have to lament, certainly, if one of them was an accomplice in the fact. It became neceſſary to ſcrutinize, with reference to this proviſion of the law, this myſterious matter, as in ſome parts of it perhaps it may appear to you to be, very diligently, and very accurately. The priſoner at the bar, charged with this offence, thought proper, as I ſhall prove to you as I am inſtructed, to fly from the accuſation, and not to meet the juſtice of his Country. The other perſons, whoſe names occur in this indictment, were apprehended. That ſpecies of diligent examination was given to the ſubject, which it was the duty of theſe great magiſtrates to give, in a caſe which aimed directly at the life of the Sovereign. In the courſe of this buſineſs thoſe perſons, ſo apprehended, were diſcharged upon bail—after the diſcharge of thoſe perſons upon bail, Mr. Croſsfield, the priſoner, came from France to this Country, under circumſtances which it will be my duty to ſtate to you, and accompanied with a body of

evidence upon this ſubject to which it will be neceſſary, when I do ſtate them, that you ſhould give particular attention; and which made it incumbent upon thoſe who have matters of this ſort to direct, to propoſe to a Grand Jury of the Country the whole of the caſe, with a view that they ſhould determine, in the firſt inſtance, whether this charge ought to be ſubmitted to that Jury of the Country which is to-day to decide upon it.

Gentlemen, this buſineſs, if looked at with reference to all the circumſtances which affect all the parties in it, is extremely complicated: it was carried in the form of an indictment before a Grand Jury of the Country. Upon principle—whether that principle was founded in the law of the Country or not, it is not material for me at this moment to conſider—but from principle, they refuſed to permit the evidence in this buſineſs to be laid before them in the order which had a natural tendency to make that evidence intelligible; they took the whole matter into their own hands, and, examining all the parties upon the ſubject, and particularly examining that perſon of the name of Upton, whom I have before deſcribed to you as an accomplice, they found the bill againſt all the priſoners.

Gentlemen, unwilling, as any perſon would have been, undoubtedly, to have tried this cauſe upon the credit of Upton alone, or of Upton confirmed by any other individual, or confirmed even by ſtrong circumſtances, it would unqueſtionably have been my duty, if it had been in my power to have called that perſon here to-day, to have given his evidence to you, but withal to have ſtated, as far as it became me, and under the correction of the wiſdom which preſides here, that his evidence ought to have been received with great jealouſy and with great attention; that you ought to protect, againſt ſuch a witneſs, a priſoner, put upon his deliverance before you, till your unwillingneſs to receive his teſtimony had been ſubdued by a conſcientious conviction, ariſing out of all the circumſtances of the caſe, not only that he was as guilty as he admitted himſelf to be, but that other perſons repreſented by him to be equally guilty with himſelf actually were ſo.

Gentlemen, it has however happened, whether fortunately for juſtice

juſtice or not I will not take upon myſelf to determine, becauſe in my ſituation and as a man I do feel that, if on the part of the public I have to regret that this man's teſtimony cannot be offered to you, on the other hand, that I ought to remember, that if this man's teſtimony could have been refuted by any circumſtances eſtabliſhed on the part of the priſoner, or if by any examination addreſſed to him by the priſoner, or by others, the innocence of the priſoner could be eſtabliſhed, it would be undoubtedly a public duty to produce ſuch a perſon;—he ought to be produced, with a view that guilt might be detected if it does exiſt, and, on the other, that innocence may be eſtabliſhed if it has been improperly accuſed. Since the bill however was found, it has happened that by the act of God that man has ceaſed to exiſt: he is dead: and I ſhall have occaſion probably, in the courſe of what I have to offer to your attention, to prove that circumſtance. It is very remarkable that—as I ſhould unqueſtionably have aſked you, if I had had that perſon to have produced as a witneſs at the bar this day, not to convict the priſoner upon his evidence, unleſs you had been ſatisfied by his evidence as confirmed by other teſtimony in the cauſe of the priſoner's guilt—I ſay it happens very remarkably, that I have a caſe to lay before you, in which I may ſay in the outſet, as I ſhould have been diſpoſed, if he had been here, to have ſaid in the concluſion, that you may lay his teſtimony out of the caſe from the beginning to the end of it.

Gentlemen, I ſhall proceed now to ſtate to you the circumſtances of this caſe, as they affect the priſoner at the bar, Mr. Croſsfield. It was in the month of Auguſt, I think, 1794, that the charge was firſt brought forward by Upton; and being very unwilling (though it is both a delicate and a difficult taſk to avoid it) to make any ſuch direct repreſentation to you as he made to others upon the ſubject, I had better, perhaps, proceed to ſtate to you the effect of that repreſentation, by mentioning to you the facts which I am inſtructed to ſay the witneſſes whom I ſhall call will prove againſt the priſoner, than detail to you what Upton perſonally repreſented with reſpect to any one of theſe facts.

Gentlemen,

Gentlemen, there are two questions of fact, which will deserve your particular attention. The first is, whether the prisoner at the bar really was engaged in a concern to fabricate such an instrument as is mentioned upon this record; and the next question for you to try will be, whether, if that be demonstrable and clear, it is or is not equally clear that that instrument, which he was so engaged in fabricating, was fabricated with the intent and for the purpose charged in this indictment—that is, to compass what he had imagined, the death of the King. With respect to the former of these facts, you will find by a witness whom I shall call to you, of the name of Dowding, that in September, 1794, upon the 8th of that month (and I should here advise you, that some of those witnesses whose testimony I am about to state do not know the individuals, or some of the individuals, who applied to them, but it will be distinctly proved to you by other persons that will be called who those individuals were), a person of the name of Dowding, who is a journeyman to a Mr. Penton, that lives in New Street Square, and who is a brass founder, will inform you that, upon the 8th of that month, in the afternoon, three men—whom I now state to you were Upton, who is dead; the prisoner, Mr. Crossfield; and a person of the name of Palmer, who will be called—came to his master's shop; that they asked him for a tube three feet long, and of five-eighths of an inch diameter in the bore: you will find he states the dimensions to be the same as other brass founders to whom they apply—five-eighths of an inch in the bore, and it was to be smooth and correct in the cylinder in the inside. The witness will inform you, if I am rightly instructed, that he shewed them a piece of a tube, and asked if that would do with respect to the size of it; that they informed him it would do, but that it must be thicker, in order that it might be smaller in the bore; the expence of it they seemed anxious about in their enquiries: the expence he stated to them in general would be high, but what would be the particular expence of it he could not take upon himself to state: he enquired what they wanted this tube for; and you will find, if I am rightly instructed with respect to his evidence, that the answer

anſwer given to that was, that the purpoſe for which they wanted it was a ſecret, and that they could not diſcloſe it to him.

Gentlemen, they applied upon the ſame day to another perſon of the name of Bland (the former not being able to ſupply them with the article that they wanted), who is a braſs founder at number 40, Shoe Lane, Fleet Street: there were but two of them that came originally to him, and you will be ſatisfied that they were Upton and the priſoner. They aſked for a tube, for a pattern to make another by: after they had aſked for this tube, Palmer came in. This witneſs not being able to ſupply them, you will find they made another application upon the ſame day to a perſon of the name of James Hubbart, who lives in Cock Lane, Snow Hill, and is likewiſe a braſs founder; he lives in the ſhop of a perſon of the name of Michael Barnett, to whom he was apprentice: and upon their addreſſing a queſtion to him ſimilar to that which they had addreſſed to the witneſſes whoſe names I have before mentioned, he referred them to a perſon of the name of Flint, who is a man in the ſame ſhop, and who will likewiſe be called to you; and he will inform you that they aſked him alſo for a tube; the barrel, I believe, was to be five-eighths of an inch in the bore, and about the eighth of an inch in thickneſs; that they propoſed to finiſh it themſelves, if the witneſs would caſt and bore it: the witneſs told them that he muſt have a pattern; and then ſome converſation paſſed with reſpect to this pattern. They were very anxious to know, as you will find from his teſtimony, how long it would be before this barrel could be made: he gave them an anſwer upon that ſubject: and you will hear under what circumſtances they parted with him. After theſe applications had been made to theſe ſeveral braſs founders, Upton, and Croſsfield, the priſoner at the bar, applied to a man of the name of Hill, who will likewiſe be called to you, Palmer being alſo in their company; and the evidence that Hill will give you is this—that Croſsfield produced to him a paper, which I have now in my hand, which contains the model of part of an air gun, that is to ſay, it contains a drawing; by which drawing Hill, whoſe buſineſs was that of a turner in wood, was to fabricate the wooden part of the inſtrument. Hill, you will alſo find, aſked them what they

wanted this inſtrument for: they did not inform him that it was a ſecret: but they told him that it was for an electrical machine.

Gentlemen, this paper will deſerve your very particular attention; becauſe I have reaſon to believe that you will find not only that this paper was delivered by Mr. Croſsfield to Hill, but that that part of the writing upon the paper, which ſtates the dimenſions of the inſtrument, is in the hand-writing of Mr. Croſsfield. Hill, in conſequence of this, following the drawing, turned ſome of the wooden parts of the model, a part of which I have now in my hand; and which it will be proved to you he carried, according to his orders, to Upton, in whoſe poſſeſſion it will be proved that this part of the wooden model was found, as well as the tube, which I have now in my hand. It will be material for you to give your particular attention to theſe circumſtances by-and-by.

Gentlemen, beſides all this, it will likewiſe be proved to you, that there was in the poſſeſſion of Upton another drawing, containing models of the inſtrument which we have charged in the firſt part of the indictment was to eject an arrow for the purpoſe of deſtroying the King; and when I have to ſtate to you by-and-by the converſations of the priſoner Croſsfield which will be proved with reſpect to the tube and the arrow, and the nature of the inſtrument, you will ſee the materiality of the circumſtances to which I am at preſent calling your attention. The other paper I have in my hand; and it contains different parts of this intended inſtrument. There is one part of it, to which you may think your particular attention is due; becauſe, if I prove the circumſtances that I have already ſtated, it will be incumbent upon the priſoner, I apprehend, more particularly after the evidence which I have to offer to you with reſpect to the intent, to give you ſome evidence for what purpoſe ſuch an inſtrument as this was actually conſtructed. Here is a drawing of the arrow, which is of the form that you may ſee perhaps by my holding the paper up to you in this manner. It is like a harpoon, and it has this peculiar circumſtance about it, that it is ſo formed, that when it preſſes againſt any hard ſubſtance the

two forks of it compreſs together, enter into the ſubſtance, and there is a hole at the end of it, which would then emit ſome ſubſtance, which it is calculated to hold.

Gentlemen of the Jury, it will alſo be proved by another witneſs whom I ſhall have to call, of the name of Cuthbert, that Upton and the priſoner went to him ſome time in that ſame month of Auguſt, 1794, for the purpoſe of looking at an air-gun that Cuthbert had. Cuthbert appears to have been an acquaintance of Upton's. You will hear from the witneſs himſelf what was the conduct of the priſoner at the bar with reſpect to that air-gun in the poſſeſſion of Cuthbert: he examined it; he handled it; ſtated that it would do very well for the purpoſe; and after a converſation of this ſort they left Cuthbert.

Gentlemen, it may probably be proved, if it be neceſſary with reſpect to the caſe of this priſoner, that ſome of theſe inſtruments which I have been ſtating were in the hands of the other parties whoſe names are upon this record; it is alſo poſſible that papers, material to eſtabliſh the facts alledged againſt ſome of theſe parties, may be thought, according to the courſe which this cauſe may take, neceſſary to be produced in evidence upon this trial; but, without detaining you with reſpect to the particulars of the evidence which applies to other perſons, I think, if I prove the facts that have been already ſtated as againſt Mr. Croſsfield, and if you ſhall find that there is diſtinct evidence of the intention with which he was engaged, in drawing theſe models, and providing for the fabrication of theſe inſtruments, that there can be very little doubt indeed in reſpect of his caſe.

Gentlemen, when the other parties were apprehended, I have before told you that Mr. Croſsfield abſconded. I believe I ſhall be able to prove to your ſatisfaction by a witneſs whom I ſhall have to call to you of the name of Palmer, whoſe name I have before mentioned, ſome of the circumſtances I am now about to open to your attention, as well as a great many of the circumſtances which I have already ſtated.

Mr. Croſsfield uſually lived in London. The firſt place in which he hid himſelf, after this charge was made, was at *Briſtol*: he

he returned afterwards from Briſtol to London: and from London he went to Portſmouth, where he engaged himſelf on board a ſhip called the Pomona, which was employed in the South Sea Whale Fiſhery. I probably need not mention to you Gentlemen that the voyage of a ſhip, engaged in that commerce, is of a conſiderable duration—ſixteen or eighteen months I believe—being a ſurgeon, he hired himſelf at Portſmouth on board that veſſel. He went uſually by the name of Doctor: it will be proved to you by witneſſes, who come forward in this buſineſs, under circumſtances, that entitle them to great credit, at leaſt ſo I ſubmit to your conſideration, that this veſſel ſailed from Portſmouth to Falmouth: that during the voyage from Portſmouth to Falmouth you will find, if I am rightly inſtructed with reſpect to the repreſentations that the mariners on board this veſſel have made, Croſsfield conducted himſelf with the greateſt decency and propriety; his name however was unknown. They ſailed from Falmouth, and, after they got out to ſea in the progreſs of their voyage Mr. Croſsfield informed the witneſſes who will be called to you who he was. You will hear the account that he gave of himſelf, the account that he gave of the part, that he had in this tranſaction, the circumſtance of his relating his eſcape and his declarations that, if it was known that he was leaving this Country in that veſſel, the Government would probably ſend a frigate after him, that he ſtates in the moſt diſtinct manner, even before the capture of the Pomona, to ſome of the witneſſes that will be called to you, circumſtances of his own connexion and tranſaction in the buſineſs, which I have been opening to you, with expreſs and clear and pointed reference to theſe models, to the tube, to the arrow, and to the other particulars that I have opened.

Gentlemen, in the courſe of the voyage this veſſel was taken by a French Corvette, the La Vengeance: ſhe was carried into Breſt: you will hear from the witneſſes the converſation, that paſſed between them and Mr. Croſsfield, when this capture took place: the ſatisfaction, which he expreſſed that he had got even out of that ſituation of danger, which he conceived himſelf to be in whilſt he was a part of the crew of any Engliſh ſhip: the

ſatisfaction,

ſatisfaction; that he had in having been captured by a French frigate, and taken into that Country where he would be ſafe. You will hear what the whole of his demeanour was whilſt he remained on board that French ſhip which captured him, and when he was in the harbour of Breſt. He was firſt removed, in conſequence of conduct, the details of which will be given by the witneſſes as connected with this buſineſs, from the French Corvette into another veſſel called the Elizabeth, which was an Engliſh ſhip, that had been captured by the French, and out of her into another veſſel, which was called the Humphries, and there are perſons in reſpectable ſituations from among the priſoners, that were detained in each of theſe veſſels to ſtate to you evidence which, without detailing it to you particularly, I think can leave, if it is entitled to any credit, no doubt upon your minds that, if Mr. Croſsfield was concerned in the fabrication of theſe inſtruments, or the drawing of theſe models, the intent, with which he was concerned in that fabrication and that drawing, was moſt diſtinctly the purpoſe and the intent charged in this indictment, *i. e.* the intent to kill the King.

Gentlemen of the Jury, you will not be ſurprized if you hear from witneſſes, whoſe teſtimony will be given to you, that Mr. Croſsfield, being carried into Breſt under ſuch circumſtances as I have ſtated, was rather in the ſituation of a ſuperintendant over the Engliſh priſoners on behalf of the French, than as a companion with theſe unfortunate perſons who had been captured by the French, and were detained in their priſon ſhips there. I have reaſon to think that you will alſo find that it was his project either to remain there or to go into Holland. In a courſe of time however cartel ſhips were to come over into this Country; with what intention Mr. Croſsfield came over into this Country it is not for me to examine nor to inſinuate. You will collect this yourſelves from the teſtimony which thoſe witneſſes will give you: but you will hear circumſtances which are remarkable enough—that Mr. Croſsfield was conſtantly in company with the Commiſſary of the French priſoners—that he will appear, according to the teſtimony of one of the witneſſes, to have gone aſhore a day or two before theſe cartel ſhips left Breſt, in order

to

to meet a member or members of the Convention; that ſhortly before he left that Country he took the name of Wilſon: that in his own hand writing he was muſtered among the priſoners by the name of Wilſon, as having been captured by the La Vengeance, not out of this veſſel called the Pomona, but out of a veſſel called the Hope; for what purpoſe he changed his name, or for what purpoſe he changed the name of the veſſel, in which he was captured, it will be for you to determine, when you have heard the whole of the evidence.

The witneſſes will alſo ſtate to you the circumſtances which took place when the priſoners were put on board the cartel ſhips, and you will ſee that it was familiar to the Commiſſary of the French priſoners, that this man ſhould paſs by the name of Wilſon, as having been captured in the Hope, and that under that falſe name he ſhould come over to this Country. Gentlemen, you will alſo hear the witneſſes inform you that in the courſe of the voyage between Breſt and this Country, Mr. Croſsfield diſtinctly deſired one of them, the only one I believe who was in the veſſel in which he came over, not to ſtate his name, and not to ſtate thoſe circumſtances of conduct and the declarations which had taken place whilſt he and that witneſs were detained together in the harbour of Breſt. They landed I think at Fowey in Cornwall, in the neighbourhood of Mevagiſſy. Some of theſe ſeamen, the witneſſes, who are perſons in reſpectable ſituations on board ſhips, mates and officers, thought it their duty, under a very different impreſſion with reſpect to Mr. Croſsfield's conduct, than perhaps that which they might have had, if they had known what had been paſſing in this Country, but yet under an extremely ſerious impreſſion in their minds, to go inſtantly to a magiſtrate to inform him what had paſſed in France, with reſpect to the conduct of this perſon. In conſequence of that charge made by perſons, who knew nothing of what had been paſſing in this Country, except ſo far as the circumſtances that had been paſſing in this Country had been related by the priſoner himſelf, the priſoner was apprehended; being apprehended, it will be in evidence before you that, as he went before the magiſtrate from Fowey or Mevagiſſy to the County Goal,

Goal, that he intimated to the perſons, who were conducting him there, that it might be for their intereſt to permit him to eſcape: he ſtated to them that a ſum of five-ſhillings was all that they could expect for the execution of the duty, which they were then upon: that he had the means of giving them much more. Theſe perſons will ſtate to you the whole of the converſation which paſſed, and on the ſuggeſtion I think of one of them that the plan would not anſwer the purpoſe of Mr. Croſsfield, becauſe the driver would ſtill be to be diſpoſed of, and aſking the queſtion what would become of the poſt boy, the anſwer given to that was that the poſt boy might be diſpoſed of by the uſe of a piſtol which one of theſe officers had.

Mr. Croſsfield was brought up before his Majeſty's Privy Council, and he was committed to the Tower, and in conſequence of all this additional teſtimony, which has immediate relation to Mr. Croſsfield, but which connects itſelf with the circumſtances which have before been ſtated with reſpect to the other priſoners, it became a matter of duty to ſubmit the whole of the caſe to a Grand Jury of the Country. They found the Bill, the priſoner's deliverance upon which is now before you.

I have ſtudiouſly forborne to mention ſeveral circumſtances which relate more particularly, and more eſpecially to other perſons whoſe names are upon this record. If I prove this caſe, as I am inſtructed to ſay I ſhall prove it, and if I prove it as I have opened it to you, I apprehend there can be no doubt of this priſoner's guilt. If that be the reſult of the teſtimony, which is given to you, Gentlemen, though it is a painful duty, it is a duty abſolutely incumbent upon me, to aſk at your hands, on the behalf of the Country, the verdict of guilty. On the other hand, if you are not ſatisfied that the offence of High Treaſon according to the ſtatute, is proved by evidence according to law, againſt the priſoner, certainly you do no more in that caſe, than your duty to your Country requires, in acquitting the priſoner.

You have before you a caſe of great importance. It is a caſe, which I am ſure you will liſten to with great attention. I am confident that you will decide it with unimpeachable integrity, and in your verdict, whatever it may be, I hope the Country

will feel a perfect satisfaction that they have had the case deliberately considered, and honestly decided upon, by the twelve men, whom I have the honour to address myself to.

Lord Chief Justice Eyre. Mr. Attorney General you do not open any particular conversation upon the point of connexion of this instrument with the use that you suppose was meant to be made of it; if you in your judgment conceive that the conversation that did pass will support that connexion, I shall be so perfectly satisfied with that declaration, that I think we may go on; if it were otherwise, an observation would occur upon the case as you have opened it.

Mr. Attorney General. I will state why I did not mention the particulars of the conversation; I think it is better the witnesses should state the conversation in their own way of stating it, than that Counsel should undertake to make a representation of it; I understand myself to be pledged to the Court, to this, that the conversation was the most direct that can possibly be stated for the purpose of proving an intention as connected with the instrument.

Lord Chief Justice Eyre. I am perfectly satisfied with that declaration.

Mr. Attorney General. Yet if the Court think it the better way that I should state in detail the conversation, I am perfectly ready to do it. "Damn me I was the ringleader of the three that intended to blow a dart at his Majesty."

Lord Chief Justice Eyre. You have said quite enough for my satisfaction.

Mr. Attorney General. My reason for not stating the particulars of the conversation which this man had with each of the witnesses, was this, and no other; I could have represented generally the nature of the conversation, but I have collected an opinion in which I may be wrong, that it is more just towards the prisoner, after generally stating to a Jury that conversations were held of such and such an effect, to leave the detail of the particulars to the witnesses, that the witnesses account of it may make the due impression upon the mind of the Jury, rather than to make a representation myself, where if I happen to be mistaken, I may create a prejudice in the mind of the Jury.

EVIDENCE

EVIDENCE FOR THE CROWN.

John Dowding, (ſworn)

Examined by *Mr. Law.*

Q. In the month of September, 1794, where did you live and work?

A. I worked with Mr. Penton, in New-ſtreet-ſquare, No. 32.

Q. What is Mr. Penton's buſineſs?

A. A braſs-founder.

Q. Do you remember being in his employment on the 8th of September, 1794?

A. Perfectly well.

Q. Do you recollect on that day any men coming to his houſe, who were not known to you?

A. I was called down on the 8th of September, by the clerk; when I came down into the counting-houſe there were three men ſtanding there.

Q. Do you recollect any thing particular of the perſon of one of them?

A. One of them was a lame man.

Q. Did you ſee that man afterwards ſo as to enable you now to ſay who that lame man was?

A. Yes.

Q. Who was that lame man?

A. Upton—one of the others was a tall man.

Q. Do you now know who the other two men were?

A. Not to my knowledge.

Q. If you ſaw them again ſhould you recollect them?

A. I cannot ſay.

Q. What did they aſk you for?

A. When I came into the counting-houſe they aſked me if I could make them a tube, I aſked them what ſort of a tube, they ſaid it was to be three foot long, the eighth of an inch thick,

five-eighths of an inch inſide the bore, and to be ſeven-eighths the outſide; it was to be quite perfect, and the inſide was to be quite a ſmooth cylinder.

Q. Did you, upon that, ſhew them any part of a tube?

A. I aſked them what ſort of a tube it was to be—they aſked me what the price would be—I told them I could not tell—they aſked me if I could tell to a few ſhillings—I told them I could not, as my maſter was not within—then I ſhewed them a piece of a tube.

Q. Was that the piece of tube you ſhewed them? *(ſhewing the witneſs a braſs tube.)*

A. It was a piece of a ſimilar ſize; they ſaid that would do if it was ſmaller inſide, that it was of the right ſize the outſide, but it muſt be thicker, and then the bore would be leſs.

Q. Did you aſk what it was for?

A. I did not then, they aſked me then if I could not tell them nearly what the price would be; I told them no, I could not, becauſe it was an out-of-the-way job, and I muſt make tools on purpoſe to make it; that I muſt make a tool to draw it on, to make it ſmooth inſide.

Q. Did you aſk them what was to be the uſe of it?

A. I told them if they would tell me the uſe of it, I could be a better judge how to make it, and, perhaps, could make it better for their uſe; they anſwered, it was a ſecret; it was Upton made anſwer it was a ſecret, and the others ſeemed to agree with him, they all ſeemed to be in one voice, ſaying, that it was a ſecret.

Q. Did you undertake the job?

A. I did not.

Q. Did you give any reaſon why you would not undertake it?

A. Yes;—When I was talking of making things for it, he aſked me if I knew what the price of it would be, I ſaid I could not tell the price of it.

Q. Relate what more paſſed when you were preſent?

A. When they aſked me about the price, I told them it was rather an out-of-the-way job, and that to make it quite parallel

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in the inſide, I muſt make tools on purpoſe to make it; they aſked me how much the expence would be, I told them I could not tell; they aſked me if I could not tell to a few ſhillings, I ſaid I could not, that my maſter was not within, and I was very buſy myſelf; I told them at laſt that it was a job not worth while undertaking as I was quite buſy; I told them then as I ſaid before, that if they would tell me the uſe of it, I could be a better judge how to make it, and, perhaps, could make it better for their uſe, they anſwered me it was a ſecret.—Then they produced a piece of tube that they had bought before at our houſe, and had ſome money returned, which was, I think, tenpence; the money was returned to Upton.

Q. Who did they deliver that back to?

A. To me; but the clerk returned the money.

Q. What is his name?

A. Maſon; but he is not in our ſervice now; it was ſuch a bit of tube as this, it was of the ſame ſize.

Q. Did they all ſeem to be concerned in the ſame buſineſs?

A. They appeared to be of the ſame ſort.

Q. You ſtated, that what one ſaid, the reſt aſſented to?

A. Yes; they ſeemed to be the ſame company, what one ſaid the others ſtood to; but as to taking my oath to the people I cannot, if I was to ſee them perhaps.

Q. What paſſed after returning the tube?

A. Nothing elſe paſſed, they went away.

John Dowding,

Croſs-examined by *Mr. Adam.*

Q. This you ſay paſſed on the 8th of September, 1794?

A. Yes; our books will ſhew it.

Q. Three perſons came together?

A. They were together when I came down; I cannot ſay whether they came together into the counting-houſe.

Q. The only one of theſe that you can ſpeak to poſitively is Upton?

A. I never ſaw any of the reſt.

Q. You never ſaw any of the others either before or ſince?

A. Upton I have ſeen ſince. I can ſwear to him.

Q. But the two others you had not ſeen before nor ſince?

A. Not to my knowledge.

Q. You talk of a tube that they had got at your houſe being brought back, and ten-pence being returned to them; what do you mean by that—do you mean the ſame three perſons?

A. There was but one perſon returned it, all three could not join hand in hand.

Q. Were all the three perſons together, at the time of returning it?

A. They were as cloſe as I am to this gentleman next me.

Q. When did they get the tube that they returned?

A. I cannot ſay.

Q. How can you tell that they got that at your houſe?

A. The clerk returned the money to them.

Q. You cannot ſay any thing, of your own knowledge, about the tube that was returned.—There was a tube got from your houſe?

A. Yes; or we ſhould not have returned the money to them.

Q. Got by Upton?

A. I cannot ſay which of them got it.

Q. The money was returned at that time?

A. It was.

Q. You ſay Upton was the perſon who ſpoke?

A. He was the perſon that ſpoke the moſt, the reſt joining ſometimes.

Q. Do you recollect any thing particularly that Upton ſaid?

A. He was the perſon who ſpoke to me when I came down, and aſked me if I could make a piece of tube.

Q. Then you diſcourſed about the price of it?

A. Not then, it was afterwards.

Q. Did you aſk any particular price?

A. I aſked no price at all.

Q. Did you ſay it would be a thing of great coſt?

A. I ſaid it would be expenſive.

Q. When they aſked how much expence, did you ſay how much?

A. No.

A. No.

Q. Then you gave them no idea of, whether it would coſt them a guinea, five guineas, or ten guineas?

A. Being a journeyman I could not tell.

Q. The diſcuſſion about the price was quite general?

A. Yes.

Q. Can you ſwear, poſitively, that theſe perſons were preſent during the whole converſation between you and Upton?

A. I can ſwear, poſitively, that there were three in the room all the time.

Q. Are there not women employed in your houſe in lackering braſs?

A. There are.

Q. Does the operation of lackering braſs go on in the ſame place, or in an adjoining one?

A. In the ſame houſe.

Q. In the ſame apartment?

A. Not in the ſame room.

Q. Therefore, if any of theſe perſons went to a woman that was lackering braſs, of courſe they muſt have been in a different apartment from that in which the converſation is ſuppoſed to have paſſed with you?

A. They did not go out while I talked with them, they might before I came down—to my knowledge they did not—I did not ſee any of them go there.

Q. You cannot ſpeak to the perſons of the other two you never ſaw them before?

A. Not to my knowledge.

Q. Nor ſince?

A. Not to my knowledge.

Q. And the thing went off entirely upon your ſaying, it could not be done but at ſome certain expence?

A. Yes.

Q. Of the three, Upton was the perſon who ſpoke moſt?

A. Yes.

Q. I think you ſaid, that when it was told you it was a ſecret, it came from Upton's voice?

A. I did not hear them all, but I can ſwear Upton ſaid that; but they were all juſt together.

Q. The two other perſons did not ſay any thing that you can charge your memory with?

A. No, I cannot.

Q. Did they ſay any thing about its being a ſecret?

A. It was juſt as they were going away it was ſaid it was a ſecret.

Q. And its being a ſecret came from Upton's voice, and not from either of the others?

A. I cannot ſwear to any other perſon's voice, they all ſeemed to join together, but Upton's voice I heard in particular.—As for the others voices I cannot tell.

Joſeph Flint, (ſworn.)

Examined by *Mr. Garrow*.

Q. You are, I believe, a braſs-founder, in Cock Lane, Snow Hill?

A. Yes.

Q. Do you remember being applied to, in the month of September, 1794, to attend any perſons in reſpect to a braſs tube that was wanted?

A. I do.

Q. Can you recollect what day of the month it was?

A. No.

Q. What day of the week?

A. No.

Q. Do you recollect what hour of the day?

A. It was ſome time after dinner, I believe.

Q. Do you remember what part of the month the anniverſary of his Majeſty's coronation falls in?

A. On the 22d of September.

Q. Was it before or after the 22d of September?

A. Being called in January, 1795, I made an enquiry among the men.

Mr. Garrow. Do not tell us any thing that is the mere effect of information of others.—But have you, after an enquiry, been

been able to ſatisfy your own mind in what part of the month it was?

A. Not at all.

Q. What time of the day was it?

A. I believe immediately after dinner.

Q. You were called by your ſervant to attend to theſe perſons?

A. By my apprentice, James Hubbart.

Q. How many people came to you?

A. Three perſons.

Q. Did you make any obſervation upon the perſon of any one of them?

A. One I obſerved to be a lame man.

Q. Did you obſerve whether he had any iron on or not?

A. No; I obſerved one to limp as he was going out at the door.

Q. Relate what paſſed between you and thoſe perſons.

A. They aſked, firſt of all, for a long piſtol-barrel; I produced a muſketoon-barrel to them: it was obſerved that would not do, they did not want it plugged up at the end; from that I obſerved, that I apprehended it muſt be a ſtraight cylinder that they wanted; they ſaid it was; that it muſt be about five-eighths of an inch diameter in the bore, and the eighth of an inch thick; and they ſaid, if I would caſt it, and bore it, they would finiſh it themſelves. I told them, I ſhould not undertake to do it without they brought a pattern: one of them obſerved, would not a rocket-caſe do; I ſaid it would, if they plugged up the end.

Q. That was for a model?

A. Yes.

Q. What was to be the length?

A. There was no length ſpecified at that time; they went away after that. I believe one of them aſked how long it would take making, to which I anſwered about three days.

Q. During the time theſe perſons were with you, did they all take a ſhare in the converſation, or was it confined to any one of them?

A. The

A. The lame man ſeemed to be the principal.

Q. Did the others interfere in the courſe of the converſation?

A. I know it was not the lame man that aſked me as to the time when it might be done.

Q. In general it was the lame man that converſed with you upon the ſubject?

A. In general it was.

Q. I believe, ſince the time of this converſation, you have ſeen a perſon of the name of Upton?

A. I ſaw him in September, 1795.

Q. Did you, when you ſaw him then, recollect having ſeen him before?

A. I did not.

Q. Did you know whether he was the lame man that converſed with you?

A. I cannot ſay.

Q. Is that all you know upon the ſubject?

A. Yes.

Joſeph Flint,

Croſs-examined by *Mr. Gurney.*

Q. When you were called down, you ſay, theſe perſons were in your ſhop?

A. Yes.

Q. Who was the perſon that ſpoke to you firſt?

A. I believe it was the lame man.

Q. Do you recollect any thing that either of them ſaid beſides the lame man, except aſking as to the time it would take making?

A. There was ſomething reſpecting a rocket-caſe, but I cannot recollect now what it was.

Q. Every thing elſe paſſed between you and the lame man?

A. Yes.

Joſeph Flint,

Re-examined by *Mr. Garrow.*

Q. Did the queſtion with reſpect to the time that would be occupied

occupied in doing the job relate to that about which the lame man had been converſing?

A. Yes; the time it would take to make the tube.

Q. Of which the other had been ſpeaking?

A. Yes.

Q. Were you examined before the Privy Council?

A. Yes.

Q. Did you ſee Upton there?

A. I ſaw him in September, 1795.

Q. Are you able to ſay with certainty whether Upton was the perſon with whom you converſed?

A. I cannot ſay that.

Thomas Bland, (ſworn.)

Examined by *Mr. Wood.*

Q. What is your buſineſs?

A. A braſs-founder.

Q. Where do you live?

A. At No. 40, in Shoe Lane, Fleet Street.

Q. Do you remember any body coming to your ſhop in September, 1794.

A. I do, very well.

Q. Can you tell what time in September it was?

A. I cannot tell the day.

Q. Was it in the beginning or the end of the month?

A. I cannot ſay.

Q. How many perſons came?

A. Firſt two men came, and in five minutes one man came to enquire after theſe two men.

Lord Chief Juſtice Eyre. Do you mean that one man came in while they were there, or after they were gone?

A. After they were gone.

Mr. Wood. What did the two men come for?

A. They aſked for a tube or a barrel; I told them it was not in my line of buſineſs; if they wanted a barrel they muſt apply to the clock-makers, or if they wanted a tube they muſt apply to thoſe that draw tubes.

Q. Did they ſay what they wanted it for?

A. No; they went away, and then another came and aſked for the two gentlemen.

Q. Do you know who that man was?

A. I think the third that came in was Peregrine Palmer.

Q. That was all that he ſaid?

A. Yes, to the beſt of my knowledge: they were gone down the lane, he went after them.

Thomas Bland,

Croſs-examined by *Mr. Adam.*

Q. Do you know Palmer?

A. I have ſeen him.

Q. Did you know him at that time?

A. I did not.

Q. How long after was it before you knew Palmer's perſon?

A. I was never acquainted with Palmer; I ſaw him before the Privy Council, they told me his name was Palmer; I ſaid, o the beſt of my knowledge, that was the third man that came to enquire for the other two.

Q. You do not know who the other perſons were?

A. One was a lame man.

Q. They ſtaid but a few minutes?

A. A very few.

Q. And you did not ſupply them with any thing of any ſort?

A. Nothing at all.

David Cuthbert, (ſworn.)

Examined by *Mr. Law.*

Q. Where do you live?

A. In Graham Court, Arundel Street.

Q. You are a mathematical inſtrument maker?

A. Yes.

Q. Do you remember calling upon Upton at any time?

A. Yes, very well.

Q. What led you to call upon him?

A. I called upon him on purpoſe to ſubſcribe a little money for

for the wives and children of thoſe people that were in priſon under ſuſpicion of High Treaſon.

Q. Do you remember at that time having any converſation with him?

A. Very little at that time.

Q. Does that little dwell upon your memory?

A. It was ſo inſignificant that I took no notice of it:—I do not know what paſſed at all the firſt time; the ſecond time I called upon him on purpoſe to know how the ſubſcription went on; inſtead of anſwering concerning the ſubſcription, he anſwered me concerning the Correſponding Society.

Q. We won't go at large into that.—Was there any thing that led to the production of any inſtrument?

A. No ſuch a thing.

Q. Do you remember calling upon him during Bartholomew fair?

A. I had given him an invitation when I firſt called there, ſeeing he was a watch-maker, to come and look at an engine of mine, which I thought very likely might be a treat to him, as being in that line; it was rather out of the way, as ſuch, he did come; that was nearly about Bartholomew fair time; the diſtance between the times that I had called on him and that time I cannot well determine, but the way that I know that he called upon me at Bartholomew fair time was, a ſon of mine was lying ill at that time, and I remember very well he was making an obſervation————

Q. We muſt not hear what your ſon obſerved to you; but, when you ſaw Upton, do you recollect having any particular converſation with him about the power of air?

A. Yes, exactly ſo; he ſaw an air-pump lying in my ſhop, I explained it to him in the beſt manner I could; I ſhewed him an air-gun, and explained it in the beſt manner I could.

Q. After having explained it to him, did he come again to look at this air-gun?

A. He did, next day.

Q. Did he come alone?

A. No, there was a man with him.

Q. Do

Q. Do you recollect any thing particular about the man that came with him?

A. No; Upton had diſpleaſed me in his converſation in the ſecond interview I had with him, and therefore I neither liked him nor his acquaintance.

Q. Did you obſerve any thing particular about the hand of that perſon?

A. No—the gentleman that came with him told me he was very fond of ſhooting, and that he had loſt ſome of his fingers by the exploſion of a gun; but whether he had or had not, I do not know, for I did not look at his hand; I was rather diſguſted with Mr. Upton as I ſaid before, and I did not pay any regard to him nor his acquaintance.

Q. But he ſaid his hand had received an injury by the exploſion of a gun?

A. He did.

Q. Did he handle the gun, or what did he do?

A. He viewed it, and ſaid it was a handſome piece.

Q. Did he apply to you to do any job for him?

A. Upton aſked me if I wanted a job, I replied I had got more buſineſs than I could do.

Q. The perſon who was with him was by at the time when he aſked you to take this job?

A. The perſon that was with him was on the outſide of the door and he was in the door-way, it was juſt as he was leaving the houſe.

Q. That man is the perſon that handled the air-gun?

A. He did.

Q. And praiſed it?

A. He did as a handſome piece, which it really was.

Q. Had you any converſation with him about the properties of air?

A. Not a word, I was at dinner—I did not get up from my ſeat all the time they were there, till they were juſt a going, and that was merely becauſe I thought they ſtopped too long.

Q. Have

Q. Have you ſeen the man who came with Upton any where ſince?

A. Never in my life, nor I don't think I ſhould have known him ſix hours or three hours after he left my place, I took ſo little notice of him.

Q. You had ſo great a diſlike to Upton that you would not let yourſelf know the perſons that came with him?

A. I did not take notice of him, nor I do not know that I ſhould have known him if I had met him in the ſtreet a minute after.

Q. Did you ſee any perſon afterwards with Upton before the Privy Council?

A. No; I never ſaw Upton at all at the Privy Council.

Q. Did you ſee any perſon before the Privy Council who had loſt any of his fingers?

A. Not that I know of; I was at the Privy Council when Mr. Dundas preſided, and there was a man of the name of Dennis, a ſailor, in the lobby; at the ſame time a man came out, he ſaid there he goes—I aſked who? why, ſaid he, Croſsfield—ſaid I, do you know him—Yes, ſaid he, damn his eyes, I would know his aſhes was he burnt, or any ſuch damned raſcal as he was; ſo I underſtood that to be the man.

Q. I do not aſk you to declarations of other people; but I aſk you whether you did not ſee a perſon who had a defect in his fingers, where the Privy Council were ſitting?

A. No; I took the man that came with Upton to me, to be a taller man—almoſt as tall as Mr. White.

David Cuthbert,

Croſs-examined by *Mr. Gurney.*

Q. Do you know in what part of the month of September Bartholomew Fair is held?

A. Somewhere about the 9th I ſuppoſe—it is all ſuppoſition, for I do not know.

Q. You ſay you invited Upton to come to your houſe to look at an engine of yours, which you thought might entertain him?

A. Yes.

A. Yes.

Q. Having an air-pump in your ſhop induced you to talk to him about the properties of air?

A. Yes.

Q. Had he aſked you any thing about the properties of air before you introduced the ſubject?

A. I do not think he did.

Q. Did he appear at the time to be converſant with the properties of air?

A. I do not think he was.

Q. And therefore he aſked you for the purpoſe of enlightening his ignorance?

A. Yes.

Mr. Law. Was this at the beginning of Bartholomew Fair or when?

A. I cannot tell.

Mr. Peregrine Palmer, (ſworn)

Examined by *Mr. Garrow.*

Q. I believe you reſide in Barnards Inn?

A. I do.

Q. You are an Attorney by profeſſion?

A. I am.

Q. How long have you been acquainted with the priſoner Croſsfield?

A. I believe about fifteen or ſixteen years.

Q. What is he by profeſſion?

A. He is a phyſician by profeſſion.

Q. Where did he reſide?

A. He has reſided at a number of places ſince I firſt knew him.

Q. Did he reſide in London in the latter part of the time that you were intimate with him?

A. He reſided in Dyers Buildings, Holborn; that was the laſt place I knew him live in.

Q. Were you very intimate with him?

A. Yes; there was a great intimacy between us.

Q. Did

Q. Did you belong to any club or ſociety of which he was a member?

A. Yes.

Q. What might it be?

A. I ſuppoſe you allude to the Correſponding Society. I did belong to ſeveral ſocieties of which he was a member, among others I was a member of the London Correſponding Society.

Lord Chief Juſtice Eyre. Was he alſo a member of that Society?

A. I do not know whether he was or not; I have ſeen him there.

Mr. Garrow. I underſtand you to have anſwered to my firſt queſtion, that you ſuppoſed I alluded to the Correſponding Society; I aſk you upon your oath have you any the leaſt doubt that he was a member of that Society?

A. I have not.

Q. You have good reaſons to know—You was a delegate was not you?

A. I was at one time.

Q. And a chairman of the committee?

A. I ſcarcely know what you mean by a chairman.

Q. I aſk you upon your oath whether you were not a chairman of a committee of the London Correſponding Society?

A. I conſider a delegate as a kind of a chairman.

Q. Did Mr. Croſsfield attend the meetings pretty regularly?

A. I believe I may have ſeen him there about three or four times; I cannot tell the exact number at this diſtance of time.

Q. Was he of the ſame diviſion with you?

A. Yes.

Q. I aſk you upon your oath, did not he attend very regularly?

A. I have ſeen him there ſeveral times.

Q. Was not he a regularly attending member?

A. I have ſeen him there frequently—three, four or five times, I believe—I cannot tell the number of times at this diſtance.

Q. Do you know a perſon who was called Upton?

A. Yes.

Q. Do you remember in the month of September 1794, accompanying the priſoner Croſsfied to Upton's houſe?

A. Yes; I do.

Q. About what time in the month was it?

A. In the beginning of the month; I cannot tell the day.

Q. Did you and Croſsfield accompany Upton to any place?

A. Yes.

Q. Where did you go to?

A. A houſe, I do not know whether it is in New-ſtreet or in New-ſtreet-ſquare.

Q. In the neighbourhood of Gough-ſquare?

A. Yes.

Q. Was it a houſe of any trade or buſineſs?

A. I believe it was a braſs-founder's.

Q. You and Croſsfield and Upton went there together?

A. Yes.

Q. What paſſed at the braſs-founder's when you were ſo in company?

A. I know nothing of what paſſed; Upton had ſome buſineſs there, as I underſtood.

Q. I am aſking what paſſed at the braſs-founder's when you were preſent making one of the company, and I deſire you to ſtate it upon your oath?

A. I have no recollection of any thing that paſſed there.

Q. Attend to what you are about and ſpeak the truth?

A. I know what I am about, and ſhall ſpeak nothing but the truth.

Q. How long were you in company with Croſsfield and Upton at the braſs-founder's in New-ſtreet?

A. A few minutes.

Q. You can recollect what paſſed?

A. I can recollect nothing at all about it.

Q. That will not ſatisfy the Court, I ſhould think?

A. I will ſay the truth, I can ſay no more about it.

Q. Was there any buſineſs tranſacted at this braſs-founder's?

A. I do not know what the buſineſs was—it was Upton's buſineſs

buſineſs as I underſtood; Upton ſaid he had ſome buſineſs at this braſs-founder's, what his buſineſs was I know not.

Q. Nor am I aſking you, except as you collected it from what paſſed on the ſpot; what paſſed there?

A. I cannot recollect; it was ſomething in the way of his own buſineſs.

Q. Did you ſee any thing produced at the braſs-founder's?

A. Not to my recollection.

Q. Will you ſwear there was not?

A. I will not; but I have no recollection of any thing.

Q. After you had finiſhed your buſineſs there, where did you go?

A. The next place we went to, was a houſe in Shoe-lane I think.

Q. What buſineſs was carried on there?

A. The ſame buſineſs.

Q. A braſs-founder?

A. Yes.

Q. You went immediately from the houſe we firſt talked of, to the houſe in Shoe-lane?

A. Yes.

Q. How long were you there in company with Croſsfield and Upton?

A. Not at all; I did not go into the houſe.

Q. You waited for them without?

A. Yes.

Q. How long were they there?

A. A very ſhort time indeed.

Q. How long do you think?

A. I ſuppoſe a minute or two minutes, a very ſhort time.

Q. Where did you go to from the braſs-founder's in Shoe-lane?

A. To a houſe in Cock lane.

Q. You did not go with them into the houſe in Shoe-lane?

A. I did not.

Q. Upon your oath did you go in afterwards to enquire after them?

A. I did.

Q. It would have been as well to have told us that—then after they were gone from the braſs-founder's in Shoe-lane you went in to enquire where the two gentlemen were gone?

A. I did.

Q. In conſequence of the information you received there of your two friends, you went after them?

A. Yes.

Q. How ſoon did you overtake Croſsfield and Upton?

A. I overtook them in Shoe-lane; I was informed they were juſt gone out.

Q. Then you walked together to Cock-lane?

A. Yes.

Q. To what houſe of trade there?

A. To a perſon of the ſame buſineſs.

Q. A braſs-founder?

A. Yes.

Q. Did you go in with them there?

A. Yes; I believe I went into the ſhop.

Q. Have you any doubt about it?

A. No; I have not.

Q. You three went into the braſs-founder's in Cock-lane together?

A. Yes.

Q. What paſſed there?

A. I know nothing about it, only there were ſome directions given by Upton to the braſs-founder, what theſe directions were I do not know.

Q. Directions given with reſpect to what?

A. I do not know—ſomething in the way of Upton's buſineſs.

Q. With reſpect to doing what?

A. I have no recollection, I am not a braſs-founder; I do not know.

Q. Do you know what a tube is?

A. Yes; certainly any man muſt know what a tube is.

Q. Was

Q. Was there any converſation there about a braſs tube and its dimenſions?

A. I have no recollection of any thing of that kind.

Q. Recollect that you are upon your oath?

A. I know that perfectly well; and therefore I ſhall ſay nothing but the truth.

Q. Was there any converſation about a model?

A. There might be ſuch converſation paſs; but I do not know whether there did or not.

Q. Do you mean to ſwear you do not recollect any thing about a model for a braſs tube—about its dimenſions—or how it was to be applied?

A. I do ſwear I do not recollect about the particular buſineſs.

Q. I am not aſking you about particulars, but give us ſome information of what paſſed; was any braſs tube produced by any body?

A. I have no recollection that there was.

Q. Have you ever ſeen any thing like this before? *(ſhewing the witneſs a braſs tube)*

A. I recollect I ſaw that at the Privy Council.

Q. Did you never ſee this before, as a ſubject upon which perſons were converſing at the time you ſaw it?

A. I do not recollect that I did.

Q. Did you ever ſee theſe before? *(ſhewing the witneſs the models)*

A. No; I never did.

Q. I am afraid you will forget your own chriſtian name by and by—you have been long acquainted with Croſsfield?

A. I have.

Q. And are well acquainted with his hand-writing?

A. Upon my word I cannot ſay that I am.

Q. Upon your oath cannot you venture to ſwear to his hand-writing?

A. There is but one thing that I can ſwear to his hand by, that is the ſigning of his name.

Q. You have frequently ſeen him write?

A. I have.

Q. Have you ever correſponded with him?

A. I never received five letters from Mr. Croſsfield in the courſe of my acquaintance with him.

Q. Look at this paper, *(ſhewing it to the witneſs)* and tell me whoſe hand-writing you believe that to be?

A. I cannot ſwear to this hand-writing.

Q. I do not aſk you to ſwear to it, and you who are an attorney know I do not—upon the oath you have taken whoſe hand-writing do you believe that to be?

A. I cannot ſwear to a belief of this hand-writing.

Q. Do you mean to ſwear that you have no belief upon the ſubject?

A. I have not.

Q. Do you mean to ſwear that you believe that is or not the hand-writing of a man you are acquainted with?

A. I do not know enough of it to be able to form an opinion upon it.

Q. Now open this paper and look at it; have you ever ſeen it before?

A. I do not know upon my word.

Q. I am ſorry to be obliged ſo often to admoniſh you, that you are upon your oath?

A. You might ſave yourſelf all that trouble, I know it very well.

Lord Chief Juſtice Eyre. You recollect that when you anſwer upon your word, that is not exactly anſwering on the obligation that you are ſpeaking under, that was the occaſion of your being reminded that you are upon your oath?

A. I conſider that when I firſt came into Court, I was ſworn to ſpeak the truth.

Lord Chief Juſtice Eyre. But it is not the proper manner of anſwering; to ſay upon my word it may be ſo and ſo.

A. It may not be a proper way of anſwering; but I conſider that every thing I am ſaying in this Court, I am ſaying upon my oath.

Mr. Garrow. Then upon the oath you have taken, have you ever ſeen that paper before?

 A. There

A. There were ſome papers ſhewn me before the Privy Council, whether this is one I cannot tell; upon my oath I do not know.

Q. Have you the leaſt doubt that that paper was ſhewn to you before the Privy Council, that you was interrogated to the ſubject, and that you gave anſwers reſpecting it?

A. I do not know whether this piece of paper was ſhewn me or not; there were ſome pieces of paper ſhewn me.

Q. Do you mean to ſwear now, that you have no belief whoſe hand-writing that is, after looking at it?

A. I can form no belief about it.

Q. You cannot be ſure that you ever ſaw this paper before I handed it to you?

A. No.

Q. Have you ever ſeen any paper which appeared to you to deſcribe the ſame ſubject; I am not ſpeaking of your examination at the Privy Council, but had you before you were examined by the Privy Council ſeen a paper containing ſuch drawings as I have ſhewn you; I tell you now that I have your examination in my hand—upon your oath had you before your examination by the Privy Council ever ſeen, and I ſhall aſk you preſently in whoſe cuſtody, any paper with ſimilar drawings to this?

A. I do not recollect any thing of the kind.

Q. Are you equal to the ſwearing that you never had?

A. I cannot ſwear that I never ſaw ſuch, but I have no recollection of any thing of the kind.

Q. Have you any belief of the kind?

A. I can form no belief.

Q. I aſk you once more upon your oath have you never ſaid when you was upon your oath, that you had ſeen a paper ſimilar to that?

Mr. Adam. Does your Lordſhip think this is the proper way of examining a witneſs in chief?

Lord Chief Juſtice Eyre. The whole courſe of this ſpecies of examination is not regular. This is a witneſs for the Crown, if he diſgraces himſelf, which it is the tendency of this examina-

tion to make him do, they loſe the benefit of his teſtimony. The idea of extracting truth from a witneſs for the Crown who diſgraces himſelf, is in my apprehenſion, and always has been, a thing perfectly impracticable, for the moment he has gone to the length of diſcrediting his teſtimony, by the manner in which he ſhuffles with your examination, there is an end of all credit to him. You recollect upon a very ſolemn occaſion, the Judges were all of opinion, that that kind of examination on the part of a proſecution was improper, for that it always ended in deſtroying the credit of your own witneſs.

Mr. Garrow. My object was to refreſh his memory. Be ſo good as look at this paper *(another paper)* do you know it?

A. I do not.

Q. Do you recollect ever ſeeing it before?

A. I cannot ſay I recollect ever ſeeing it before, but it appears to me to be a paper ſimilar to what was ſhewn me at the Privy Council.

Q. You are correct in that—that is the paper that was ſhewn to you before the Privy Council—ſuppoſing that to be the ſame paper, do you recollect ever to have ſeen it before it was ſhewn to you at the Privy Council?

A. I do not.

Q. Do you know whoſe hand-writing it is?

A. I do not; it appears to be a different hand-writing from the laſt you ſhewed me.

Q. Nor the drawings whoſe they are?

A. No.

Q. Do you know whoſe hand-writing this is?

A. It is a hand-writing I am not acquainted with.

Q. The laſt place that they were at I think was the braſs-founder's in Cock-lane—how long were you Croſsfield and Upton at the braſs-founder's in Cock-lane?

A. A very few minutes.

Q. Where did you go next?

A. To Mr. Hill's in Bartholomew-cloſe.

Q. What buſineſs does he carry on?

A. I believe he is a turner.

Q. A

Q. A turner in braſs or wood?

A. I do not know; I have heard he is a turner.

Q. Is he a member of the London Correſponding Society?

A. He was at that time.

Q. Both Upton and Croſsfield, if I underſtand you right, accompanied you to Mr. Hill's?

A. They did ſo.

Q. What paſſed there?

A. I recollect Upton giving ſome inſtructions to Hill for ſomething, I think the word model was made uſe of, but I am not a mechanic myſelf; the word model or pattern, or ſomething of that nature was mentioned.

Q. Was any drawing produced upon that occaſion?

A. I think I remember Upton producing ſome drawing?

Q. For what purpoſe?

A. As inſtructions for ſomething that Hill was to make.

Q. Was that drawing left with Hill?

A. I cannot ſay,

Q. You did not ſee the drawing made at the time?

A. I think Upton made it at the time; but I will not poſitively ſwear that.

Q. Do you recollect any thing more that paſſed at Hill's?

A. No.

Q. Do you recollect any thing elſe being produced at Hill's beſides the drawing?

A. I do not recollect it, there might be ſuch a thing produced, but I have no recollection of it.

Q. After you had left Hill's, where did you go to next?

A. Mr. Croſsfield and I were going ſomewhere upon ſome buſineſs together; it was merely an accidental buſineſs Upton's going with us.

Q. That can be no anſwer to my preſent queſtion; which is, where you went to from Hill's?

A. I cannot recollect.

Q. Did you part there, or go any where together afterwards?

A. I believe we parted ſomewhere thereabouts; I do not recollect going any where after that.

Q. Where

Q. Where did Upton live?

A. In Bell-yard.

Q. How many times do you think, ſpeaking within compaſs, may you have met Mr. Croſsfield at Upton's?

A. I ſuppoſe I might have ſeen him once or twice before.

Q. How often afterwards?

A. I do not recollect whether I was there afterwards or not.

Q. What is the impreſſion upon your mind?

A. At the time theſe things were going on, I had no idea that they were of a nature that I ſhould be called into a Court of Juſtice to give evidence upon, and therefore I conſidered them as mere trivial things.

Q. You heard of the circumſtance that certain perſons were taken into cuſtody upon Upton's information?

A. Yes; certainly.

Q. Where was Croſsfield living at that time?

A. Where I told you before, in Dyer's-buildings.

Q. How ſoon after the information given by Upton became public, did Croſsfield remove from Dyer's-buildings?

A. I cannot ſay.

Q. How ſoon did you miſs him from London?

A. I have no recollection upon the ſubject; I left London about that time myſelf, I generally go into the Weſt of England about that time in the year.

Q. Perhaps he went with you?

A. He and I went to Briſtol together.

Q. How ſoon after Upton's examination before the Privy Council was it that Croſsfield and you left London?

A. I cannot ſay.

Q. Was it before or after you knew that a reward was advertiſed for the apprehenſion of Croſsfield?

A. Many months before that.

Q. You went to Briſtol together?

A. Yes.

Q. When did you go to Briſtol?

A. I think in the month of October 1794, but I cannot be certain.

Q. Has

Q. Has Mr. Crofsfield any family, or is he a ſingle man?

A. He is a married man.

Q. Did his wife reſide with him in town?

A. She did not reſide with him at the time you are ſpeaking of—ſhe did not reſide with him in Dyer's-buildings I believe.

Q. I meant merely to aſk whether his family went with him, or he went alone with you?

A. His wife did not accompany us.

Q. You and he went alone?

A. Yes.

Q. How long did you continue at Briſtol?

A. I continued there a few days, and I left him at Briſtol, he had ſome idea of ſettling at Briſtol, as a phyſician; he went down with that intent.

Q. Did you ever ſee him at Briſtol again?

A. I did not.

Q. Did you ſee him in any other part of England ſoon after you left him at Briſtol?

A. Yes; I ſaw him in London.

Q. How ſoon after you came back to London did he return from Briſtol?

A. It was about the time that I was firſt examined before the Privy Council, that he came to London.

Q. Where did he reſide when he came to London?

A. I do not know.

Q. Did he go back to Dyer's-buildings.

A. He did not.

Q. Did you correſpond with him whilſt he was at Briſtol?

A. I think I received one letter from him whilſt he was at Briſtol, and but one.

Q. Did you write to him?

A. I do not recollect.

Q. I wiſh you would try to recollect whether you anſwered his letter when he was at Briſtol?

A. I do not recollect whether I did—I did not enter his letter.

Q. Perhaps it might aſſiſt your memory, to aſk you whether you

you addreſſed to him by the name of Croſsfield, or any other name?

A. If I addreſſed to him at Briſtol, it was by the name of Croſsfield.

Q. Then did you write to him there or not?

A. I do not recollect; but I do not think I wrote to him at all.

Q. How long did he continue in town after his return from Briſtol?

A. I think I might have ſeen him at the diſtance of a fortnight or three weeks.

Q. Was this about the time that you were attending the Privy Council from time to time?

A. Yes.

Q. And you do not know where he reſided?

A. No.

Q. Where did you meet him?

A. I never ſaw him but at my own chambers.

Q. Did you aſk him where he reſided, if you ſhould have occaſion to call on him, or to write to him?

A. I do not know whether I did or not—yes, I think I did.

Q. But you did not know where he was to be found?

A. No.

Q. Do you know where he went to after he left Briſtol?

A. Only from hearſay.

Q. Did he correſpond with you after he left London again?

A. No.

Q. You probably then did not ſee him again till after he was in cuſtody?

A. I have only ſeen him once ſince he was in London, and that was at the Privy Council.

Mr. Peregrine Palmer,

Croſs-examined by *Mr. Adam.*

Q. You have known Mr. Croſsfield for fifteen or ſixteen years; was he in the habit of frequently coming to your chambers?

A. Yes;

A. Yes; I was upon terms of great intimacy with him.

Q. And he came frequently to your chambers in the months of Auguſt, September, and October, 1794?

A. He did.

Q. Did you happen to know at that time the particular ſtate of Mr. Croſsfield's health?

A. I did.

Q. What ſtate of health was he in?

A. I know he was in a very ill ſtate of health.

Q. Was he under the neceſſity of taking any medicines to alleviate pain?

A. I know he uſed, at that time, to take large quantities of opium.

Q. I think you ſaid, that upon a particular day in September, 1794, but the particular day of the month you did not mention, that you went with him to Upton's?

A. Yes.

Q. Do you happen to know how long Croſsfield and Upton had been acquainted before that time?

A. I do not know how long before, ſome very ſhort time before.

Q. How long had you yourſelf been acquainted with Upton, before that time?

A. I ſuppoſe a month, or two months.

Q. Can you tell whether Mr. Croſsfield's acquaintance with Upton, was in conſequence of your acquaintance with Upton?

A. I believe Croſsfield's acquaintance with Upton was by ſeeing him at a diviſion of the Correſponding Society.

Q. Can you tell how long this was antecedently to the time when you went to Upton's houſe with Croſsfield?

A. I have no recollection.

Q. Upton was a watchmaker, was not he?

A. He was.

Q. Do you happen to know whether he is a mechanic in any other reſpect than as a watchmaker?

A. I remember ſeeing at his ſhop an electrical machine that he had made, which he ſhewed us as a curioſity.

Q. Upton

Q. Upton was a member of the Correſponding Society?

A. He was.

Q. Do you happen to know whether there was any enquiry going forward in that Society, in regard to Upton's character and conduct?

A. I remember he was diſgraced in that Society.

Q. Do you happen to know whether any of the perſons, who are charged upon this indictment, were among thoſe who diſgraced him in that Society?

A. I know that Mr. Le Maitre was one that particularly objected to him.

Q. Do you know of any other?

A. I do not.

Q. Can you tell whether the enquiries, reſpecting Upton, were going forward about the end of Auguſt, or the beginning of September, 1794, and down to the latter end of September?

A. I cannot charge my memory as to dates; about that time I was in the habit of attending ſome of the meetings of the Society, and it was during that time that this enquiry took place.

Q. Do you recollect at what particular times you were in the habits of attending the Society?

A. I think in the months of Auguſt and September, of that year.

Q. You ſay, that on the day on which you and Mr. Croſsfield went to Upton's houſe, that you went with him to New-ſtreet, or New-ſtreet-ſquare, you cannot recollect which?

A. There are two or three ſtreets there that are called New-ſtreet, and New-ſtreet-ſquare.

Q. What was the circumſtance which led you to go to Upton's on that particular day?

A. Upton had a watch of mine to repair, Croſsfield and I, I think, though I do not mean poſitively to ſwear to that particular circumſtance, Croſsfield and I dined that day together, and I called afterwards with Croſsfield upon Upton for my watch.

Q. Do

Q. Do you recollect where you dined that day?

A. I have no recollection.

Q. Do you recollect in what part of the town it was?

A. Somewhere in the neighbourhood of Temple-bar.

Q. Upton lived in Bell-yard?

A. Yes.

Q. Then, for the reaſon you have given, you called upon Upton?

A. Yes.

Q. And from thence you went to the houſe, in New-ſtreet?

A. Yes.

Q. That was a braſs-founder's?

A. Yes.

Q. Did you all three go in?

A. I believe we did.

Q. Do you know who came to you upon that occaſion, whether it was the maſter or the ſervant?

A. I have no recollection of either the maſter or ſervant in the buſineſs.

Q. From thence you went to Cock-lane?

A. Yes.

Q. You ſaid you did not go into the houſe in Cock-lane?

A. No, that was in Shoe-lane.

Q. Did any thing particular prevent your going into the houſe in Shoe-lane?

A. I recollect I had a natural occaſion to ſtop.

Q. You went in afterwards and enquired whether they were gone?

A. Yes.

Q. And then you ſaw them in the ſtreet?

A. Yes; I followed them.

Q. Was it in conſequence of overtaking them there that you went with them to the next place?

A. Mr. Croſsfield and I were going together into the city; when I called at Upton's for my watch, Upton ſaid he was going the ſame way, and would accompany us, that was one reaſon

reaſon I know why Upton accompanied us upon that occaſion.

Q. You went to Cock-lane next?

A. Yes.

Q. Did you go to any other place that night?

A. Yes; I went to Hill's afterwards, in Bartholomew Cloſe.

Q. You were aſked, by my learned friend, with reſpect to Mr. Croſsfield's place of abode; he lived in Dyer's-buildings?

A. Yes.

Q. Did he live in family there?

A. No, in lodgings.

Q. Do you remember to have ſeen Croſsfield about the time Smith, Le Maitre, and Higgins were committed?

A. I do.

Q. Do you remember to have ſeen him about at that time, juſt as publicly as before?

A. Yes, juſt the ſame.

Lord Chief Juſtice Eyre. Was that after his return from Briſtol?

A. No, before he went to Briſtol.

Mr. Adam. Did you ſee him repeatedly about this time?

A. Frequently; I ſtaid in town but a few days before I went to Briſtol.

Lord Chief Juſtice Eyre. You went to Briſtol ſoon after Le Maitre, and Smith were in cuſtody?

A. Soon after.

Mr. Adam. Do you recollect any thing that paſſed between you and Croſsfield reſpecting this journey to Briſtol?

A. I know Croſsfield intended to go to Briſtol three or four months before that time, to ſee whether it would be an eligible place for him to ſettle in as a phyſician; and that he intended to make ſome experiments upon the Briſtol and Bath waters, which he thought might be of ſervice to him in his medical capacity.

Q. How long had he this intention before the time we are ſpeaking of?

A. For ſeveral months before.

Q. How long did you remain at Briſtol?

A. A few days.

Q. And Croſsfield with you?

A. Yes.

Q. Had you frequent opportunities of ſeeing Croſsfield at Briſtol?

A. Yes, every day.

Q. Did he go about publicly?

A. As publicly as any man could poſſibly do.

Q. You left him at Briſtol, and he remained there ſometime?

A. He remained there till the time when I was firſt called before the Privy Council; he returned to town about that time.

Q. You ſaw him then?

A. Yes, in London.

Q. Did he uſe any myſtery about himſelf, or his ſituation then?

A. No, he did not at the time when I firſt ſaw him; I never made any particular enquiries about it.

Q. Do you know at what time he left London?

A. I think, the laſt time I recollect to have ſeen him, was on the day I was laſt called before the Privy Council—I was called three times before the Privy Council, in a week or ten days—the laſt time I ſaw him was, I think, in the month of January.

Q. Then Upton being called before the Privy Council, when Higgins and Le Maitre were before the Privy Council, was in the end of September?

A. I think it was in the month of September.

Q. My learned friend aſked you with reſpect to his being advertiſed, and a reward offered for apprehending him—when did you firſt ſee that?

A. I cannot ſpeak as to the time when it appeared; but this I know, that it was a conſiderable time after I laſt ſaw him, and a conſiderable time after I heard that he was failed.

Q. Had you ever any converſation with Upton, with regard to the inſtrument?

A. I never had.

Mr. Peregrine Palmer.

Re-examined by *Mr. Garrow.*

Q. It will be neceſſary to aſk you one or two queſtions.—You told my learned friend, that the laſt time you ſaw Croſsfield, was before he went abroad; was it on the day you was laſt examined before the Privy Council, before he went abroad?

A. Yes.

Q. Where did you ſee him that day?

A. At my own chambers.

Q. That was after your return from Briſtol?

A. Yes.

Q. You told him you had been examined before the Privy Council?

A. Yes.

Q. Have you been examined more than once by the Privy Council?

A. Yes, three times.

Q. Upon which of your three examinations before the Privy Council did you undertake, if poſſible, to find Croſsfield, and to produce him before the Privy Council as a witneſs?

A. At my firſt examination, I think, it was.

Q. How often, between your firſt and your third examination, did Croſsfield viſit your chambers?

A. I cannot ſay.

Q. Was it daily?

A. No, it might be once or twice; when I ſay once or twice, I do not mean to ſay that he was no more than twice at my chambers—I cannot particularly ſay the number of times.

Q. The laſt time you ſaw him was on the day on which you concluded your examination before the Privy Council, after you had been examined?

A. I think it was before I attended the Council.

Q. You ſaw him, probably, in the early part of the day, and went and was examined afterwards by the Privy Council?

A. Yes.

Q. There is one other thing I wiſh to have explained.—You ſaid

ſaid Croſsfield went to Briſtol with a view to ſee whether that was an eligible ſituation for him to ſettle in as a phyſician; and to try ſome experiments upon the Briſtol and Bath waters.—Did he announce himſelf as a phyſician newly arrived at Briſtol, or at Bath?

A. He did not go to practice as a phyſician, he went to ſee whether Briſtol would be an eligible ſituation for him to practiſe as a phyſican.

Q. There is one thing more that may be miſtaken unleſs I put a queſtion upon it.—In your anſwer to Mr. Adam, you ſaid that before he went for Briſtol, he was publicly about here in town?

A. Yes.

Q. And, I think, you ſaid that though you enquired of him, after his return, you never learned from him where his reſidence was?

A. No.

Q. And you only ſaw him at your own chambers?

A. Certainly; and the reaſon he aſſigned to me was——

Mr. Garrow. I do not aſk your reaſons.

Lord Chief Juſtice Eyre. It is part of the explanation.

A. The reaſon he ſtated was this—I told him the circumſtance of my being ſummoned before the Privy Council at the firſt time; and I acquainted him that his attendance was likewiſe required, he told me he was engaged to go abroad as the ſurgeon of a ſhip; that he had no kind of objection to attend the Privy Council; but he knew nothing of the matter then before the Council; and that his ſtaying in town would be the means of detaining him from going the voyage.

Mr. Garrow. You explained to him that the Privy Council wiſhed much that he ſhould attend, and that you had promiſed to procure his attendance as a witneſs?

A. Yes.

Q. To which he anſwered, that knowing nothing of the affairs that were tranſacted there, and being engaged to go abroad, he ſhould go, and not continue any longer in town for that purpoſe?

 A. Yes.

A. Yes.

Q. Did you ever communicate, in either of your examinations, to the Privy Council, that the gentleman did not attend becauſe it was inconvenient to his affairs?

A. My examination will ſhew that.

Q. Or whether your examination did not cloſe without the Privy Council having the leaſt conception, from any thing you ſtated to them, that you knew where to find Croſsfield?

A. I certainly did not know where to find him.

John Hill, (ſworn.)

Examined by *Mr. Law.*

Q. You are a turner?

A. Yes.

Q. Where do you live?

A. In Bartholomew-cloſe.

Q. What diviſion of the Correſponding Society were you a member of?

A. Diviſion ſix.

Q. Were you acquainted with Upton, in September, 1794?

A. I knew him.

Q. Do you know Mr. Palmer, who has juſt been examined?

A. Yes.

Q. Do you remember Upton and Palmer coming to your houſe about that time?

A. Upton, Palmer, and another man came to my houſe about that time.

Q. September, 1794?

A. Yes.

Q. Do you remember any queſtion being put to you by Palmer, or that other man, when they came to your houſe at the time you mentioned?

A. Upton aſked me if I could turn in wood, I told him yes; he aſked me if I would do him a job, I ſaid yes.

Q. Did he mention any thing about a ſketch?

A. No; he began to tell me about what ſort of job it was to be—I did not rightly underſtand, according to what he ſaid

to

to me, what ſort of thing he wanted, but they made a ſketch of it.

Q. Look at this paper, is that the ſketch?

A. I think that is the ſketch that was produced.

Lord Chief Juſtice Eyre. Was it done in ink, or with a pencil?

A. In ink, I believe—I lent them a pen an ink.

Mr. Law. I ſee there is written on the other ſide "This "houſe to let enquire within."—Was that written on the paper before they made the ſketch upon it?

A. Yes.

Q. Was that a paper of yours they found at your houſe?

A. Yes.

Q. Were all the three perſons you have mentioned, Palmer, Upton, and the third perſon, to whom you have not given a name, preſent when that ſketch was drawn?

A. Yes.

Q. Had you any converſation with them in which way the thing that was ſo ſketched out was to be done?

A. I aſked Upton what it was for, he ſaid it was for ſomething in the electrifying machine way, he told me to bring it to his houſe, and that I ſhould be paid for it.

Q. Was any thing ſaid how it was to be done?

A. Nothing more than that.

Q. Do you recollect whether Upton, Palmer, or the ſtranger, ſketched that out?

A. The ſtranger did ſomething to it, to the beſt of my recollection.

Q. Were there more perſons than one that did ſomething to it?

A. I think I did ſomething to it.

Q. Under whoſe direction did you do that ſomething?

A. Directions from Upton.

Q. Was the whole done between you, Upton, and the ſtranger?

A. Yes.

Q. Palmer did no part of it?

A. I do not recollect that he did.

Q. There is a ſtraight piece—was there any converſation about doing the ſtraight piece?

A. I aſked what it was for, they ſaid it was ſomething in the electrifying machine way.

Q. Was it ſaid how the ſtraight piece was to be done?

A. It was to be quite ſtraight, like a round ruler.

Q. Is that *(the model in wood)* one of the things you made, in conſequence of that direction, as a round ruler?

A. I think it is.

Q. Was that the thing you did as a model for the braſs-work?

A. Yes, that looks like it.

Q. One was to be done in wood-work, the other in braſs-work; you did this as meaning to conform to the directions contained in the ſketch?

A. Yes; and I took them to Upton's houſe, for him to look at them to ſee if they were right.

Q. Did the perſons who beſpoke them order you to do ſo?

A. Upton ordered me to do ſo.

Q. Which of them told you you ſhould be paid for them?

A. Upton.

Q. Are you ſure it was Upton that told you that?

A. Yes.

Q. Are you ſure none of the others mentioned any thing about paying for them?

A. Yes.

Q. Do you remember who you ſaw when you went to Upton's?

A. I ſaw a man playing at cards with him; I do not know who that man was.

Q. Did you ſee Mrs. Upton there?

A. I cannot recollect whether I did; only I recollect perfectly well he was playing at cards with a man.

Q. Was there no woman of the party?

A. I think I did ſee a woman; ſhe came into the place in the mean time, I think.

Q. And

Q. And you left theſe things?

A. I did.

Q. When did you carry the things to Upton?

A. About three days after they were ordered.

Q. Do you happen to recollect the day of September when they were ordered?

A. Towards the latter end of September, I believe it was.

John Hill,

Croſs-examined by *Mr. Gurney.*

Q. You have ſtated that you yourſelf were a member of the Correſponding Society—of that Society Upton likewiſe was a member?

A. Yes, he was.

Q. Have you any knowledge of any enquiries that were going forward at that time in the Correſponding Society reſpecting Upton—were there any imputations thrown upon Upton's character in the Correſponding Society?

A. There were.

Q. Do you know any of the perſons who were principally concerned in throwing thoſe imputations—was Mr. Le Maitre active in that?

A. I cannot ſay exactly; Higgins ſaid ſomething which affronted Upton, when they were about to inveſtigate his character.

Q. Were you preſent at any other meeting when any perſon whatever brought any charges againſt Upton?

Mr. Law. I object to that queſtion.

Lord Chief Juſtice Eyre. The object of the examination is, to fix that Upton had, for ſome reaſons, which they mean to ſhew, conceived malice againſt ſome of thoſe perſons.

Mr. Law. I ſubmit they are to get at that object by regular means.

Lord Chief Juſtice Eyre. The means they propoſe is, to ſhew that ſome of theſe people made ſome charges againſt Upton, in

conſequence of which the former witneſs ſaid Upton was diſgraced.

Mr. Law. I do not object to any thing that is aſked reſpecting Le Maitre, or any body by name, but the queſtion is put in general.

Lord Chief Juſtice Eyre. In general, unleſs it can be followed by ſomething perſonal to ſome one of theſe people, it amounts to nothing; but the examination has already gone to Le Maitre being one of the perſons.

Mr. Gurney. I aſſure your Lordſhip I abſtained from mentioning the names of any one of the priſoners, that it might not be ſaid I put the words in his mouth; but as that gives riſe to an objection, I will put my queſtions more directly.——Do you remember whether, pending that examination into Upton's character, you heard Higgins ſay any thing in the Society reſpecting Upton's character?

A. Upton was going to ſave the Society the trouble of expelling him—he was going to take himſelf away; with that Higgins ſaid, there he hops off: he affronted Upton directly, becauſe it was caſting a reflection upon his lameneſs.

Q. Were there, or were there not, expreſſions of violent animoſity paſſing between Le Maitre, Higgins, Smith, and Upton, in the Society?

A. There was ſome animoſity between them, but I did not particularly notice what it aroſe from, nor how it ended.

Q. In point of fact, were Le Maitre, Smith, and Higgins, purſuing any enquiry into the character of Upton?

A. Not as I know of.

Q. At any time after you had delivered this model to Upton, did he call upon you at your houſe, after Le Maitre, Higgins, and Smith were apprehended?

A. After Upton was apprehended himſelf, on the Sunday, he called upon me.

Q. How long before that had he himſelf been taken up?

A. Only on the Saturday night, according to his own account.

Q. What did Upton then ſay to you reſpecting Le Maitre?

Mr.

Mr. Attorney General. I would juſt intimate to Mr. Gurney, that I have not offered any evidence of acts or declarations of Upton, unleſs in the preſence of the priſoner.

Mr. Gurney. Your Lordſhip has already obſerved the object of my croſs-examination is, to prove the animoſity in Upton's mind reſpecting ſome of the perſons in this indictment, I am going to aſk a queſtion to point out that animoſity, by ſhewing ſomething Upton ſaid concerning one of thoſe perſons.

Lord Chief Juſtice Eyre. The difficulty of the caſe is, that at preſent there is nothing, properly ſpeaking, from Upton in evidence, and therefore your ſhewing that Upton had animoſity againſt any of theſe priſoners, is rather going before the point; it will be better for you to examine to that in caſe they can eſtabliſh any declaration of Upton's which will be evidence againſt your client, then it will be proper for you to ſhew that Upton had malice againſt your client.

Mr. Gurney. If your Lordſhip will direct the witneſs to retire for a minute, I will ſtate the object of my queſtion more particularly.

Mr. Adam. I ſubmit to your Lordſhip that the line of examination Mr. Gurney is now following up is admiſſible in the preſent ſtage of the cauſe. Your Lordſhip will obſerve that this indictment lays, as the Attorney General has ſtated, a conſpiracy to take away the life of the King; that there are counts that contain an allegation of conſpiracy; and, as the Attorney General ſtated, there is likewiſe part of the indictment which contains no allegation of conſpiracy; the priſoner is brought up upon the whole of the indictment, and he has pleaded to the whole of the indictment: what part of the indictment is to be ſubmitted to the conſideration of the Jury as proved, and what part of the indictment is to be ſubmitted as not proved, is what it is impoſſible for me at the preſent moment to know. All that I know at preſent is, that the priſoner ſtands indicted with having conſpired with three others, who are known, and with others who are not known to the Grand Jury, for the purpoſe of taking away the life of the King; and it is particularly alledged in the different overt acts, with regard to the preparation of this inſtrument, which is ſuppoſed to be made for that particular purpoſe, and with regard

gard to the conſultations ſuppoſed to have been had among the parties, that this Upton, whom my learned friend has ſtated to be in the other world, and whom, therefore, he cannot produce as a witneſs—that Upton is one of the principal, but the material conſpirator; and not only ſo, but that this inſtrument was delivered to him for the particular purpoſe ſtated in the different overt acts: what I wiſh to call the attention of the Court to is this, Upton then appears upon the face of the charge to be a perſon whoſe name, whoſe character, whoſe mind, whoſe demeanour, whoſe intention, with regard to theſe parties, is neceſſarily implicated, and therefore I think it follows, as a neceſſary conſequence, that when a witneſs is brought by the proſecution from whom the Counſel for the priſoner imagine they can derive intelligence with regard to Upton's animoſity, and the nature of his mind, they are entitled to give ſuch colour and ſuch appearance to the character of that perſon, who evidently is a principal actor according to the evidence before the Court; for your Lordſhip obſerves, in every ſtep that has been taken, throughout all the perigrination in the different ſtreets to the different braſs founders—that throughout the whole Upton has been the foremoſt man; and therefore I contend, that, as the whole ſeems to have iſſued from Upton, as Upton is named upon the record, your Lordſhips and the Jury have to try his conduct and his character: but, above all, I contend that that which my learned friend is examining too, namely, the animoſity of Upton, is a fit ſubject for examination; and whatever makes out that animoſity, which ſhews that any of the perſons charged with this conſpiracy could not conſpire with Upton, on account of the animoſity in which they lived, is *prima facie* ground for our examination; we do mean, if we are under the neceſſity of going into our caſe, to give your Lordſhip ſuch evidence in chief; but at preſent, if the Crown bring a witneſs from whom we imagine we can prove that fact, all we claim of the Court is, to be allowed to do it now.

Mr. Gurney. Perhaps it would exclude all objection if I were to ſtate the exact object of the queſtion I was propoſing:—it is, to prove an attempt of Upton to ſuborn Hill to ſwear, before the

the Privy Council, that Le Maitre was the perſon who called upon him with Palmer when he received the order for theſe models.

Mr. Attorney General. I riſe for the purpoſe of ſtating to your Lordſhip, that I do not feel any anxiety with reſpect to what the Court may think proper to direct upon this ſubject. It was in conſequence of an intimation given by me, that your Lordſhip had the trouble of hearing any diſcuſſion upon it; becauſe, when Mr. Gurney was putting a queſtion reſpecting a declaration of Upton's in the abſence of the priſoner, I thought it my duty to intimate to him that I had cautiouſly and ſtudiouſly abſtained from aſking any queſtion, with reſpect to any declaration or act of Upton, where I have not evidence to offer that the priſoner was one of the perſons preſent: I have no objection to its being taken in any way Mr. Gurney chooſes to ſtate, that Upton had as much animoſity as poſſible againſt Higgins, Le Maitre, and others; what I ſtate is this, that the declarations of Upton never can be evidence in a caſe of this ſort, unleſs we, on the other hand, had given ſome evidence of the declarations of Upton with reſpect to the party now at the bar. Mr. Adam, ſays, that Upton is ſtated upon this record to have conſpired with theſe perſons; that is not the fact: we are to prove the conduct of the priſoner; having done that, it muſt be not by the declarations of Upton, but by evidence, independent of theſe declarations, that the purpoſe and intention of his mind muſt be proved to be ſuch as is charged upon this record.

Mr. Law. There is no one charge of a conſpiracy with Upton through the whole of the indictment, nor is his name mentioned as a conſpirator; we have not attempted to give any evidence of any acts of Upton but in the preſence of Palmer, and a third perſon, whom we have ſhewn to be the priſoner: if we had given evidence of declarations of his at a diſtinct and detached time, it would have opened a door to this evidence.—If it is fit to aſk this queſtion, we ſubmit we ſhould be at liberty to go into declarations of the ſame man Upton.

Mr. Garrow. It ſeems to me, that the very manner in which

it

it may be inſiſted that this is a proper examination, goes to demonſtrate it cannot be proper in this ſtage of the cauſe: I am aware there is a ſtage of the cauſe, as has been hinted, when this may by poſſibility become competent evidence: it is as it is opened, to ſhew the animoſity of Upton; and from whence the learned gentlemen ſtate that they mean to infer, firſt, that Upton could not by any poſſibility or probability conſpire with thoſe with whom he was in a ſtate of conſtant animoſity, and that probably he was of courſe not conſpiring with them but againſt them. Now I could underſtand the application and the importance of this argument, and the examination, if the courſe the Attorney General had taken had been this, inſtead of charging and laying before your Lordſhip the acts of the priſoner now at the bar, and his acts alone, or the acts of others when in his company and preſence, the Attorney General had given in evidence either the acts of Upton when alone, and when he might have been actuated by animoſity againſt any of theſe perſons, or declarations of his when he might have been actuated by the ſame animoſity; to repudiate all thoſe acts of Upton, to get rid of the impreſſion of all theſe aſſertions and declarations of Upton, ſo circumſtanced, I could eaſily imagine the extreme importance of ſhewing that Upton had declared he had ſet about doing this with a view to injure others, but it ſeems to me that that can by no means be evidence at preſent.

Mr. Adam. Your Lordſhip will favour me with a few words in reply. Your Lordſhip will obſerve what the nature of the queſtion is that is propoſed to be put, for it is only by referring to the particular queſtion that your Lordſhip can judge of the propriety or impropriety of putting it; the queſtion my learned friend propoſes to put is this, whether in point of fact Upton did, upon a certain day, and at a certain time, after the diſcovery of this ſuppoſed conſpiracy—whether he did or did not endeavour to get the witneſs at the bar to make a falſe accuſation againſt Le Maitre, one of the perſons accuſed of this conſpiracy. Now your Lordſhip will obſerve, that that is a queſtion which does not go to Upton's general declarations—does not go to his general demeanour—does not even go to eſtabliſh an univerſal prevailing

prevailing animoſity in the mind of Upton, but it goes to eſtabliſh this clear and diſtinct point, that there exiſted in the mind of Upton either ſuch an animoſity, or ſuch a deſire of ſelf-preſervation, that he was determined to get a perſon to lay the whole blame upon, in order that he might either eſcape harmleſs, or poſſibly that he might reek his vengeance upon the perſon who had offended him, againſt whom he had an animoſity: and I contend that, as this is an indictment for a conſpiracy to take away the life of the King, and as in that Upton is mentioned by name as one of the perſons employed to make this particular inſtrument, and as he is brought forward as a particular character in this tranſaction, my friend is entitled to defend the priſoner by an examination into the attempts of Upton to ſuborn this man to perjury againſt one of the perſons indicted for this conſpiracy.

Lord Chief Juſtice Eyre. I doubt whether the fact, if diſtinctly proved, that Upton had done any thing that marked animoſity, or that he had made ſuch a declaration as this can, in any ſtage of the cauſe, when one comes to conſider it, be admitted; I will not pronounce a poſitive opinion upon that, becauſe I do not know exactly what will be the courſe of the evidence, or what ultimately we may think fit to receive, which may let in theſe declarations. At preſent it is not receivable, becauſe they are declarations not upon oath—declarations not upon oath of a man dead, not under thoſe circumſtances which place it upon the footing of an oath; and therefore whatever Upton may have ſaid is not in its own nature evidence, and conſequently cannot be received, unleſs in one particular caſe, and that is where it is *argumentum ad hominem*, by way of taking off the credit of any thing the witneſs had ſaid at another time upon his oath, there it may be gone into, though not upon oath; for if a man is upon oath in one ſtory, and makes a declaration before or after of a different kind, this will take off from the credit of that teſtimony; otherwiſe, in the nature of the thing, Upton's declaration is no evidence at all.

Mr. Garrow. I now propoſe to call John Le Bretton.

Mr.

Mr. Adam. I ſhould be obliged to my friend to ſtate to what points he propoſes to examine this witneſs.

Mr. Garrow. I call this witneſs to two facts, both of which, as it appears to us, are of conſiderable importance; the firſt is to the time and manner of the flight of the priſoner, after this accuſation was made known againſt Upton; the next is, to his diſtinct declarations of the ſhare of the guilt he had in this tranſaction.

Mr. Adam. My friend has ſtated that the principal point to which he means to call this witneſs, is to the declarations of the priſoner with reſpect to his participation in the guilt of this tranſaction. If my learned friend has any particular fact, that is a different queſtion, and I have no objections at all to his calling Le Bretton to prove that fact; but if he means, after he has proved that particular fact, to go on to examine Le Bretton to declarations of the priſoner, I then have to ſubmit to your Lordſhip, with great humility, but I think with great confidence, that your Lordſhip, when you come to conſider the ſituation of this proſecution, will be of opinion, that there is no ground whatever for admitting ſuch evidence of declaration.—Firſt of all permit me to ſtate to the Court how I underſtand the facts in this caſe to ſtand; ſecondly, permit me to ſtate to the Court———

Mr. Garrow. I was going to ſubmit to my friend's judgment, whether it would not be more proper to wait till I had exhauſted that which my friend feels no objection to; becauſe it is not impoſſible that in the firſt part of my examination of this witneſs I may remove a part of my friend's objection.—I mean to ſhew the diſtinct fact of his flight.

Lord Chief Juſtice Eyre. But you muſt firſt ſhew the *corpus delicti*. Does this man fly becauſe he and two other perſons went into a braſs founder's ſhop, or a turner's ſhop, and ordered inſtruments of a particular deſcription—what then? If there was an examination before the Privy Council—what then? What all this means at preſent I know nothing of, nor can the Jury know any thing of; you muſt firſt of all ſhew that in ſomebody this was an offence, and you may, for aught I know, ſhew

ſhew it by the very medium of the evidence which you propoſe to call, but then you muſt begin at the other end of it; there is a poſſibility that you might give a ſenſe and a meaning to this obſcure and unintelligible evidence which we have had already, that may connect and apply it to the particular charge, but at preſent I ſhould ſay, we have heard a great deal about a turner's ſhop, and a braſs founder's ſhop, and it is all nothing.

Mr. Garrow. Your Lordſhip muſt be aware that the Attorney General would not have left this caſe as it is brought now.

Lord Chief Juſtice Eyre. Certainly not.

Mr. Garrow. We are now going to give thoſe facts the ſolution which the Court is aſking for.

Mr. Adam. The only misfortune I labour under is, that the train of my thoughts has ſuffered ſome degree of interruption from my learned friend; not, I am ſure, with any intention of that ſort, becauſe I always experience kindneſs and civility from him. I will endeavour to recover the train in which I was proceeding as well as I can.

Lord Chief Juſtice Eyre. What are we about! Mr. Adam do you mean to ſay that the priſoner's confeſſion of his guilt, if any ſuch thing happened, is not to be given in evidence againſt him, out of his own mouth?

Mr. Juſtice Groſe. What he has ſaid perhaps is reſpecting the purpoſe for which theſe things were ordered.

Mr. Adam. Will your Lordſhip permit me to ſtate the grounds upon which I mean to addreſs myſelf to your Lordſhip:—I was endeavouring to draw your Lordſhip's attention to the nature of the facts, and to the manner in which theſe facts were proved, and then to aſk your Lordſhip whether there was, according to the proof that now lies before the Court, any evidence whatever, in a proſecution for a crime of this ſort, that could entitle my friends to give in evidence theſe declarations, and theſe confeſſions; and I found my obſervation in the nature of this proſecution, and the law of High Treaſon. My friend, the Attorney General, has ſtated, with great correctneſs, that there muſt be an overt act laid in the indictment; that that overt

act muſt be proved not by one witneſs but by two, unleſs there are two overt acts of the ſame kind, and then one may be proved by one, and another by another witneſs. What is the nature of the evidence already given?—Your Lordſhip has had given in evidence as I ſtated it before, not with a view of ſtating it in any way but in a way perfectly grave—a perigrination of three perſons from one braſs founder's ſhop to another, and then to a turner's ſhop; your Lordſhip has it in evidence, that where any thing was made, the priſoner had no earthly connection with the order.

Mr. Garrow. He expreſsly aſſiſted in directing the model.

Mr. Adam. The firſt witneſs called was Dowding; that witneſs did ſay he believed they all aſſented, but that Upton alone ſpoke: at that place nothing was done of any ſort. They then went to a another braſs founder's, where nothing was done. They then went to a third, where nothing was done. Then, afterwards, they came to the turner's, where there were directions given to make a particular thing, in a particular form, in wood.—Now, what I contend before your Lordſhip is this, that to that fact there is but one witneſs——

Lord Chief Juſtice Eyre. To what fact?

Mr. Adam. To the fact of making that model which lies upon the table, and the only witneſs to that fact is the laſt witneſs who was examined; becauſe your Lordſhip will obſerve, that whatever opinion your Lordſhip may have of Mr. Palmer's evidence, he has not ſpoken poſitively to any one part of the tranſaction; and it is perfectly certain, that whatever paſſed when Mr. Palmer was there, was never carried into execution at all; and, therefore, as far as Mr. Palmer's evidence goes, he does not advance one iota beyond the poſition in which the evidence ſtands with regard to the braſs founders, namely, an inchoate direction, but which inchoate direction is not even proved ſpecifically to be given by the priſoner, and certainly there is nothing proved to have been executed in conſequence of that inchoate direction. Now what is the overt act, if there is any?—it is ſingly the making that model: then the making that model, if it is an overt act ſufficient to entitle your Lordſhip to admit

admit the evidence of declaration and of confeſſion, upon the part of the priſoner, is an overt act proved merely by one witneſs; therefore, I contend upon that ground, according to the form of proceeding in High Treaſon, that it is impoſſible for them, without having eſtabliſhed that overt act clearly and manifeſtly, by the evidence of two witneſſes, to found any thing that can advance one iota in proof of the guilt of the priſoner; and I ſtate that confidently upon this ground, becauſe if it were in your Lordſhip's breaſt to admit the overt act to be proved by a ſingle witneſs, and afterwards to admit the declarations of the priſoner, to give colour to the uſe of that inſtrument; you, in point of fact, ſend to the Jury a queſtion to try, with reſpect to Treaſon, where the foundation, that is to ſay, that which eſtabliſhes the *corpus delecti*, is eſtabliſhed by one witneſs only, and not by two, as the law requires.—I contend, therefore, upon that ground, that if your Lordſhip is of opinion with me, that I have ſtated that evidence correctly, that the only overt act, if it be an overt act, is the making that model, that that overt act is proved only by one witneſs; and conſequently, according to the rules of proceeding in High Treaſon, the Court have it not in their power, and the Court ought not——

Lord Chief Juſtice Eyre. You are right, what they ought not, they have it not in their power to do.

Mr. Adam. Hitherto I have argued upon the idea, that there has been colour ſufficient given to the nature of that model, the only overt act proved, the only thing proved to be done, for that is the meaning of an overt act, that tends to infer an attempt to take away the life of the King; your Lordſhip will conſider whether any colour is given to it or not, and then your Lordſhip will conſider this, whether in point of fact if your Lordſhip thinks there is no particular colour or complection given to this, that takes it out of the ſituation of a common inſtrument, for a mere matter of mechanical curioſity. You will admit confeſſional evidence in order to give that colour and appearance to it; I contend, that that which now lies before the Court, according to the evidence which has been given about it, ſtands in a ſituation in its nature perfectly

indifferent, it may have been, for ought I know, meant for a very bad purpoſe, it may have been meant for a very good purpoſe, it may have been meant for a purpoſe perfectly indifferent, moſt undoubtedly I am entitled to put all theſe ſuppoſitions.—Now, I aſk in a criminal caſe of this ſort, with evidence in the nature of confeſſional evidence, about which, I am ſure, I will not trouble your Lordſhip at any length in the preſent ſtage of this buſineſs, becauſe your Lordſhip is better aware of the nature of that evidence than any thing, I can ſay, can make you aware of it—I ſay, whether your Lordſhip thinks, in a criminal proceeding of this ſort, where the thing done is proved only as I have ſtated it, where it is not proved to be done with any particular colour, whether your Lordſhip is not bound to ſuppoſe, until colour is given to it, by ſome ſuch evidence as tends to prove an overt act, out of the mouth of witneſſes that have received it, or ſuppoſed to receive it from the mouth of the priſoner, whether your Lordſhip thinks it right to admit it.

The nature of confeſſional evidence is this, that undoubtedly it is good or bad, according to the ſituation and circumſtances under which it is given; and if your Lordſhip permits confeſſional evidence to be given, does it not amount to this, that your Lordſhip is allowing the words and declarations of a priſoner, not to a particular fact, but to the intent—if the words and declaration of the priſoner are to be proved upon this occaſion, they do not go to prove an identical fact, but they go to prove a particular intent, or a particular diſpoſition of the mind. —Now to apply that again to the ſituation of this caſe, to the colour that is given to the uſe to which that inſtrument was meant to apply, I muſt then aſk humbly, but moſt firmly, whether your Lordſhip thinks, that in this ſtage of the cauſe, without going further, it is poſſible for my friends to give the confeſſional evidence of the declarations of the priſoner in this caſe; —above all, I ſubmit that this inſtrument produced, is the only overt act proved, it is proved only by one witneſs, and conſequently that they do not ſtand in a ſituation to ſhow the mind of the priſoner, till they have eſtabliſhed moſt clearly and indiſputably this overt act, either by two witneſſes, or till they ſhall have

have given ſuch colour and complexion to it, as to entitle your Lordſhip to think evidence of confeſſion admiſſible, as confirmatory and corroboratory—Your Lordſhip knows the doctrine of evidence of confeſſion, there was a time when it was merely treated as corroborative evidence, though of late it has been admitted.

Lord Chief Juſtice Eyre. Whether there is any rule of law, which requires that there ſhould be a certain quantity of colour of charge proved in evidence before the Court can receive the confeſſion of the priſoner?

Mr. Gurney. My Lord, I am about to cite an authority which I conceive will furniſh an anſwer to your Lordſhip's queſtion; but I will firſt beg to ſtate what evidence the Crown has offered in ſupport of this indictment. The Attorney General has not yet ſtated the overt act, to which he intends to apply his evidence; but, I ſuppoſe, the overt act intended to be ſupported by it is the ſecond, in which it is ſtated, that the priſoner, and others, did employ and engage John Hill, to make two pieces of wood, to be uſed as models for the making and forming certain parts of an inſtrument, to be uſed for the traiterous purpoſe charged in the indictment.

Now, of any concern which the priſoner may be ſaid to have had in that direction, I ſubmit to your Lordſhip that we have the teſtimony but of one witneſs; the identity of Croſsfield, even as being preſent when theſe directions were given, has been ſpoken to only by Palmer—Hill has not ſpoken to the identity of Croſsfield, or any other perſon whatever, but Upton, and Palmer. The authority I allude to is this, in Mr. Juſtice Foſter's diſcourſe upon the ſubject of High Treaſon, page 241, in the caſe of Francis Willis—"The Counſel for the Crown "called a witneſs to prove what the priſoner had ſaid to him "touching the ſhare he had in the Treaſon, he then ſtood "charged with.—The priſoner's Counſel objected to this ſort "of evidence, and inſiſted, that by this act no confeſſion, ex- "cept it be made in open Court, ſhall be admitted in evidence; "but the Judges preſent were very clear that ſuch confeſſion is "evidence admiſſible, proper to be left to a Jury, and will go

" in corroboration of other evidence to the overt acts, though it " might be ſtill a diſputable point, whether a confeſſion out " of Court, proved by two witneſſes, is of itſelf ſufficient to " convict.—Upon this laſt point none of them, except Chief " Baron Ward, delivered any direct opinion, his words are " A confeſſion ſhall not ſupply the want of a witneſs, there " ſhall be two witneſſes to the Treaſon notwithſtanding; but " to ſay it ſhall not be given in evidence there is no ground " for it. The Attorney General admitted, that two witneſſes " are neceſſary beſides the confeſſion—the Solicitor is more ex- " plicit, and ſaith, he (the priſoner) ſhall not be convicted on " a trial without two lawful witneſſes, that is the thing pro- " vided for. It was to exclude a precedent that had been ſettled " in Tong's caſe (the caſe already cited from Kelyng and " Hale) but it was not deſigned to exclude all confeſſions. " That was evidence at law, and always muſt be ſo. The de- " ſign of the act was to exclude confeſſions from having the " force of a conviction unleſs it were in a Court of Record; " and to prevent a confeſſion proved by two witneſſes from " being a ſufficient ground for a conviction."

I ſubmit that this is a direct and poſitive authority, that there muſt be two witneſſes to Treaſon, previous to the production of any corroborative evidence.

Lord Chief Juſtice Eyre. To put an end to this objection, it will be ſufficient to obſerve, that even upon the reaſoning of the Counſel for the priſoner, this evidence ought to be admitted, for here are two witneſſes, and more than two to the very overt act that is now inſiſted upon, in the way in which the priſoner's own Counſel put it; for unqueſtionably it being proved that theſe three perſons were all together at Hill's, and a model having been there made, and approved of by one, at leaſt, and they all preſent, it is a queſtion for the Jury, whether thoſe who were preſent, and who did not expreſs particular marks of approbation, did or not concur in it; and if they did concur in it, there are three witneſſes to the overt act; but if it were not ſo it may be a good objection to make, in a future ſtage of the cauſe, that there is but one witneſs to any one overt act of

High

High Treaſon, and that this confeſſional evidence, upon your rule, will not ſupply the want of another witneſs; that may poſſibly be, but the uſe of the confeſſional evidence is at preſent to make the firſt part of the evidence intelligible, which it is not, nor do I know it ever will be; but it may, perhaps, appear from theſe declarations of the priſoner, whether the priſoner's evidence can be rendered intelligible or not, out of the mouth of the priſoner—the authority cited ſhews, that the priſoner's confeſſion is to be received in explanation, and corroboration of the evidence offered, and it may be offered upon the ground of there being already two witneſſes to the overt act inſiſted upon; but I am of opinion, that it might be offered if but one witneſs at preſent had appeared, becauſe another witneſs, after they have made this evidence intelligible, may come and give other evidence of another branch of the overt act; there is no rule of law which ſays, that you ſhall eſtabliſh the overt act by the evidence of two witneſſes firſt, before you ſhall hear any confeſſional evidence, and that is the only queſtion in the cauſe.

John Le Bretton, (ſworn.)

Examined by *Mr. Garrow.*

Q. You ſailed from Falmouth, I underſtand, on board the Pomona?

A. Yes.

Q. What were you?

A. Boat-ſteerer.

Q. What was the Pomona?

A. A South Sea whaler.

Q. You ſailed from Falmouth, on the 13th of February, 1795?

A. We did.

Q. Where were you bound to?

A. The Southern Fiſhery, round Cape Horn.

Q. Do you know the priſoner, Croſsfield?

A. I do.

Q. How long before you ſailed had you ſeen him?

 A. He

A. He came on board our ship about a week before we sailed from Portsmouth.

Q. Can you tell us at what time he did sail from Portsmouth?

A. On the 29th or 30th of January, I cannot say which.

Q. In what character did he come on board?

A. As surgeon.

Q. By what name did he pass, from the time he came on board at Portsmouth till you sailed?

A. By the name of "the Doctor," as is most commonly used on board a ship.

Q. Did you understand that to be a description of his profession as doctor?

A. Yes.

Q. Did you know his name at that time?

A. I did not.

Lord Chief Justice Eyre. Do you receive men in this situation without having their name taken down?

A. The Captain might have his name taken down, but I did not know his name.

Mr. Garrow. You sailed on the 13th?

A. Yes.

Q. On the 15th you were taken by a French corvette called the La Vengeance?

A. Yes.

Q. And were carried into Brest?

A. Yes.

Q. You arrived there on the 23d?

A. We did, to the best of my knowledge.

Q. Until after you were captured by the French corvette, had you ever heard, from the prisoner, what his name was, or heard him called by any description but "the Doctor?"

A. Not until we arrived at Brest.

Q. What name did he then assume?

A. He wrote his own name in the list that was to be sent on shore, "Robert Thomas Crossfield."

Q. Were you shifted before you went into Brest?

A. Part of us were taken into the Frenchman.

Q. Did the priſoner or you go in the firſt number that went out of the Engliſh ſhip into the French ſhip?

A. The priſoner went in the firſt number.

Q. Do you recollect any expreſſion of the priſoner, when he went over the ſhip's ſide?

A. Yes; as he was going over the ſide, he wiſhed me and the chief-mate good by, ſaying, "he was happy he was going to France, he would ſooner go there than to England."

Q. When you arrived at Breſt, did you find the priſoner there?

A. Yes; on board the ſame corvette that had taken us.

Q. After you had gone with your ſhip into Breſt, were you put on board the ſame ſhip with him?

A. The Pomona was turned adrift, and we were taken into the ſame corvette as they were in.

Q. By what name did he paſs in France?

A. His own name in the muſter liſt.

Q. Were you muſtered frequently?

A. Yes.

Q. What was the conduct of the priſoner on board the Pomona, before he was captured?

Lord Chief Juſtice Eyre. If you mean to apply it to this particular ſubject very well; but as to any other miſconduct of any other kind——

Mr. Garrow. I mean to prove what was his conduct before he was taken, and then to contraſt it with his conduct on this particular ſubject.

Lord Chief Juſtice Eyre. But, I think, there ought to be nothing given in evidence againſt the priſoner, that may operate to his diſadvantage, until you have fixed ſomething upon him, to which that has a relation—till then it is all prejudice.

Mr. Garrow. Then I muſt tranſpoſe the evidence.—After you had arrived at Breſt, did you hear the priſoner make uſe of any expreſſions, with reſpect to his Majeſty the King of England; or as to any ſhare he had had in any matter which related to his Majeſty?

A. Yes, I did.

Q. Be ſo good as ſtate very deliberately what they were?

A. I heard him ſay, he was one of thoſe who invented the air-gun, to *aſſignate* his Majeſty—to ſhoot his Majeſty.

Q. Did you put any queſtion in conſequence of his ſaying that?

A. Yes, I aſked him what it was like; he told me, the arrow was to go through a kind of tube by the force of inflammable air.

Q. Did he deſcribe the arrow?

A. Yes; he deſcribed it like one of our harpoons, which we kill whales with.

Q. The harpoon is a barbed inſtrument?

A. Yes.

Q. Did he explain the properties of the barbs of the arrow, that was to be uſed for this purpoſe?

A. I do not rightly recollect any further than that.

Q. State any other expreſſions you heard from him relative to the ſame ſubject, or relative to the King of England, during his impriſonment there?

A. I do not rightly recollect.

Q. Did he uſe thoſe expreſſions, you have mentioned, once, or more than once?

A. I heard him talk of the gun ſeveral times.

Q. This was a converſation with yourſelf?

A. Chiefly with myſelf.

Q. Do you recollect any ſongs that he ſung?

Mr. Adam. Does your Lordſhip think that is evidence?

Mr. Garrow. I mean to ſtate that they were ſeditious.

Lord Chief Juſtice Eyre. I think you had better forbear that examination.

Mr. Garrow. You told us you found him at Breſt, by the name of Croſsfield—How long did you continue in priſon at Breſt, the priſoner paſſing by the name of Croſsfield?

A. Till we came away.

Q. In what manner were you to be brought from Breſt to this Country?

A. By a cartel which came from the Weſt Indies.

Q. When

Q. When the cartel was ready, and you were about to be transferred into that, what name did the priſoner aſſume?

A. The name of "H. Wilſon."

Q. Who made out the muſter liſt for the purpoſe of transferring you from the French ſhip into the other?

A. He was one himſelf.

Q. Had he acted at all as muſter maſter?

A. Not at all, any Engliſhman uſed to write the names—he ſtood at the gang-way and put the peoples names down, and he put down his own name "H. Wilſon," the firſt or ſecond name.

Q. Did you hear the perſons called over according to the liſt?

A. We had not the muſter liſt called over; I ſaw that wrote in it.

Q. Did he embark in the cartel by the name of Wilſon?

A. He did.

Q. The ſhip out of which Croſsfield was taken was the Pomona?

A. It was.

Q. Was he deſcribed in the liſt as H. Wilſon of the Pomona or as of any other ſhip?

A. As of—"the Hope."

Mr. Adam. Your Lordſhip obſerves the witneſs is now giving parol teſtimony of a writing?

Lord Chief Juſtice Eyre. This paper I apprehend ought to be in ſome public office?

Mr. Attorney General. It is left in France.

Mr. Adam. Do you know what became of that muſter liſt?

A. I do not; I believe it goes to the repreſentative of Breſt.

Mr. Garrow. Was any profeſſion deſcribed?

A. It was "H. Wilſon, of the Hope, a paſſenger taken by the "ſame veſſel."

Q. Did you hear any other diſreſpectful or ſeditious expreſſions from the priſoner, reſpecting his Majeſty, that you recollect, while you were at Breſt?

A. I do not recollect any others.

Lord Chief Juſtice Eyre. The whole is, he abſconded; and when he was to return to England, he aſſumed a feigned name.

I do

I do not think his not being a loyal ſubject is evidence againſt him upon this caſe.

John Le Breton.

Croſs-examined by *Mr. Adam.*

Q. Do you know any thing of your own knowledge with reſpect to the manner in which this muſter liſt is diſpoſed of?

A. I cannot tell.

Q. For any thing you know, this muſter liſt is ſent over to the Admiralty of England?

A. It may be for what I know.

Q. Are you ſure you read this muſter liſt with attention, at the time you have been ſpeaking to?

A. I am ſure that I both ſaw and read it over.

Q. And you can charge your memory correctly at this diſtance of time with what you have ſtated?

A. Yes.

Q. What was your ſituation on board the Pomona?

A. Boat-ſteerer.

Q. What was the number of the Pomona's crew?

A. Twenty-three I think, the Captain included?

Q. What was the Captain's name?

A. Charles Clarke.

Q. Did he continue a priſoner in France with you all the time?

A. He did.

Q. Did he come back in the ſame cartel ſhip with you to England?

A. He did.

Q. Have you ſeen him frequently ſince you came back to England?

A. I did a good while ſince.

Q. How long ſince?

A. Never ſince laſt Chriſtmas.

Q. Were you examined before the Privy Council upon this buſineſs?

A. I was.

Q. Was Captain Clarke examined before the Privy Council?

A. I

A. I believe he was not.

Q. Did he attend at the time you attended?

A. Not at the Privy Council he did not.

Q. Have you seen him since your examination before the Privy Council?

A. Yes.

Q. Where?

A. In London.

Q. In what particular place?

A. At the Solicitor's—Mr. White's.

Q. Have you ever seen him in any other place?

A. Yes.

Q. Where?

A. On board his ship.

Q. Have you never seen him at any house on the banks of the river Thames?

A. I have at his lodgings in Wapping.

Q. Where were his lodgings in Wapping?

A. By Gun-dock.

Q. Who is the landlady of the lodgings at Wapping?

A. I do not rightly recollect the name.

Q. Should you recollect the name if it were mentioned to you?

A. I should.

Q. It is not a very uncommon name you know?

A. I do not know for that.

Q. Was the name White?

A. No.

Q. Thompson?

A. No.

Q. Was it Williamson?

A. No.

Q. Was it Smith?

A. No, it was not.

Q. His landlady's name then is not Smith?

A. Not at the laſt time he came to London.

Q. But

Q. But ſince your return from captivity, have you ſeen him at Mrs. Smith's at Wapping?

A. Yes; I was there once or twice with him, but he did not lodge there.

Q. Do you know Mrs. Smith of Wapping?

A. No farther than juſt by calling there with him.

Q. When was it you ſaw him two or three times at Mrs. Smith's?

A. At the time he was fitting his ſhip out, after his return from France.

Q. Had you any converſation with him at that time upon this ſubject?

A. I cannot rightly ſay that I had.

Q. Then if any body were to come, and ſay that you had converſation with him upon this ſubject at Mrs. Smith's at Wapping, ſince your return from France, they muſt of courſe not be ſpeaking truth?

A. No; I do not know that they could.

Q. Then for any thing that you recollect, you may have had converſation with him at Mrs. Smith's at Wapping?

A. I might have talked to him.

Q. I am not aſking you about general converſation; but whether you talked about Mr. Croſsfield the priſoner?

A. I do not recollect.

Q. Your recollection is very accurate to the words Mr. Croſsfield ſpoke, and to words you read in a paper, and both thoſe things happened a great while before this meeting at Mrs. Smith's at Wapping. I aſk you upon your oath, do you not recollect any converſation you had with Captain Clarke at Mrs Smith's at Wapping, ſince you came back from France, upon the ſubject of Mr. Croſsfield and upon this accuſation?

A. I do not.

Q. Will you poſitively take upon yourſelf to ſwear you never had any?

A. No further than I told him I had been examined before the Privy Council.

Q. Then

Q. Then now you recollect that you had been examined before the Privy Council, and that you told him ſo?

A. Yes.

Q. In conſequence of your telling him that you had been examined at the Privy Council, did nothing further paſs relative to Mr. Croſsfield?

A. No, it did not.

Q. Did you not aſk him whether he had not over heard Mr. Croſsfield ſay ſuch and ſuch words upon the ſubject?

A. No, I did not.

Q. I put it to you again, and recollect that you are upon your oath. You ſay you do not recollect having had any converſation with Captain Clarke about what Captain Clarke muſt have over heard paſs between you and Mr. Croſsfield, upon the ſubject of this accuſation?

A. No, I did not.

Q. Neither at Mrs. Smith's nor any where elſe, ſince your return from France, nor ſince your examination at the Privy Council?

A. I did not; nor Captain Clarke never was ſo inquiſitive as to aſk me.

Q. Nor were you ſo communicative as to tell him?

A. No.

Q. How often might you ſee Captain Clarke at Mrs. Smith's?

A. I do not know that I called there with him above two or three times.

Q. Is he your Captain now?

A. Yes.

Q. Where is he now?

A. He may be on the coaſt of Africa for aught I know.

Q. How long is it ſince he left England?

A. At Chriſtmas laſt.

Q. When did you return from France?

A. I believe we landed the firſt or ſecond of September, I cannot ſay for a day or two.

Q. I think you told us Mr. Croſsfield came on board the ſhip at Portſmouth?

A. I

A. I did.

Q. And that you ſailed upon the 13th from Falmouth?

A. Yes; and were taken upon the 15th.

Q. What day did you ſail from Portſmouth?

A. On the 29th or 30th, I cannot ſay which.

Q. How long had Croſsfield been at Portſmouth before you ſailed?

A. He came on board us about a week before we ſailed.

Q. And you knew him by the name of "the Doctor,"—for aught you know your Captain might have known his real name?

A. He might.

Q. During the time that the ſhip lay at Portſmouth, before ſhe ſailed from St. Helens, were you frequently in company with Mr. Croſsfield?

A. At meal times.

Q. Did you ever come on ſhore with him?

A. He was on ſhore two different evenings with me, at Portſmouth.

Q. Who came on ſhore beſides him and you?

A. The boat's crew.

Q. How many might that boat's crew conſiſt of?

A. Five men.

Q. Did you come on ſhore together?

A. Yes.

Q. Did you go to places of public reſort?

A. No.

Q. Mr. Croſsfield went publicly about the ſtreets with you?

A. Yes.

Q. This was in the month of January?

A. Yes.

Q. You were driven into Falmouth?

A. We went into Falmouth.

Q. What was the ſhip loaded with?

A. Caſks of water, and proviſions for the voyage.

Q. Do you mean to ſay upon your oath, that caſks of water and proviſions for the voyage, were all the Captain and the ſhip's

ſhip's crew had laid in, for the purpoſe of trafficking to the South Seas?

A. No.

Q. What was there beſides?

A. The Captain's private trade.

Q. What did that conſiſt of?

A. I cannot ſay.

Q. Had not you private trade of your own?

A. Nothing but a couple of dozen pair of ſtockings.

Q. Did not the private trade of the Captain and the crew conſiſt of jewellery, trinkets, watches, and other articles?

A. He had ſomething of that kind.

Q. And to a conſiderable value?

A. Yes, I believe he had.

Q. You put into Falmouth by ſtreſs of weather?

A. By the wind getting on to the weſtward, and we were afraid to ſtay at ſea, on account of the French.

Q. What day did you put into Falmouth?

A. I believe it was the ſecond of February, I cannot ſay rightly for the day, having loſt my journal.

Q. You ſailed the 13th—and remained ten or eleven days at Falmouth?

A. Yes.

Q. Did you remain ſome time in the harbour?

A. We went to the Roads.

Q. Were you frequently on ſhore?

A. Yes.

Q. Was Mr. Croſsfield frequently on ſhore at Falmouth?

A. He was never on ſhore more than once, if he was that.

Q. That you are poſitive to?

A. Yes.

Q. Were you on ſhore with him at that time?

A. I cannot ſay that I was.

Q. You cannot tell how long he remained on ſhore?

A. I do not know that he was on ſhore at all; if he was on ſhore, it was not more than once.

Q. If

Q. If you do not know that he was on ſhore, you cannot take upon yourſelf to ſay any thing about it.

A. No, I cannot tell whether he was on ſhore or not, becauſe I do not know any thing about it.

Q. You ſailed upon the 13th, and were captured upon the 15th?

A. Yes.

Q. As ſoon as you were captured, were you all put on board the corvette?

A. No.

Q. How long was it before your being put on board the French ſhip, after your capture, and being carried into Breſt?

A. From the 15th to the 23d.

Q. During that time, what ſort of weather had you?

A. Pretty moderate for the time of year.

Q. How many Engliſh priſoners were there of you altogether on board that ſhip?

A. There were none but our ſhip's crew at firſt.

Q. Do you recollect any ſcheme upon the part of your ſhip's crew to take poſſeſſion of the French ſhip?

A. Yes, I do.

Q. Who was concerned in that ſcheme?

A. We were all concerned in it, as far as I know.

Q. Captain Clarke was concerned?

A. He was.

Q. You were concerned?

A. Yes.

Q. Mr. Croſsfield was concerned?

A. I believe he was.

Q. And that was between the period of your capture and the period of your getting into Breſt?

A. It was about three days after our capture.

Q. How did that ſcheme fail?

A. By one or two being diſheartened, and the priſoners we took from other ſhips being outlandiſh men, and not agreeing to it.

Q. Will you ſwear that Mr. Croſsfield was not one of the

foremoſt in that attempt—was he not ready to enter ſword-in-hand into the cabin, to make that reſcue?

A. I was not in the cabin, and I cannot pretend to ſay what I did not ſee.

Q. Where were you firſt taken to, when you went into Breſt harbour?

A. Into the roads.

Q. Did you go along-ſide any other Engliſh ſhip?

A. No.

Q. Had you any intercourſe with the Engliſh priſoners of other ſhips at that time?

A. Not until we got on board the priſon-ſhip.

Q. You were removed from the ſhip in which you were taken into a priſon-ſhip?

A. We were.

Q. Did you meet any Engliſh priſoners in that other priſon-ſhip?

A. Yes, numbers.

Q. Do you recollect the names of any of them?

A. No, not rightly.

Q. Was not Mr. Croſsfield carried on board the priſon-ſhip with you?

A. He was.

Q. What was the name of that priſon-ſhip?

A. The Elizabeth.

Q. What ſhip lay along-ſide the Elizabeth, the neareſt ſhip?

A. I cannot rightly ſay what was the neareſt ſhip to us.

Q. Do you remember the L'Achille?

A. Yes.

Q. Was not ſhe cloſe to you?

A. Pretty near hand.

Q. Was not the Normandy cloſe to you?

A. She was pretty near.

Q. I need not aſk you whether Mr. Croſsfield ſpeaks French?

A. He does.

Q. Did not he ſerve in common as an interpreter between

the priſoners that could ſpeak French, and thoſe who could not?

A. Sometimes he did; there were ſeveral that could talk French.

Q. Do you know any of the Engliſh ſailors that were on board the L'Achille or the Normandy?

A. Not the particular ones.

Q. Do you remember any captains?

A. Not to know their names; I ſhould remember them if I ſaw their perſons.

Q. Do you remember Captain Yellowley?

A. Not in particular; there was a Captain Yellowley, who was Captain of the tranſport we came over in; he was not on board the priſon-ſhip.

Q. Where did you meet him?

A. In Landernau river.

Q. Do you remember Mr. Cleverton?

A. I do.

Q. Where did you know him?

A. He was taken by the ſame ſhip, two or three days after we were.

Q. Did he come on board the ſame priſon-ſhip with you?

A. He did.

Q. Did he ſtay on board that priſon-ſhip, the Elizabeth, during the whole time Mr. Croſsfield and you were on board her?

A. He did.

Q. Mr. Croſsfield, of courſe, was acquainted with him?

A. For aught I know he was.

Q. You did not meſs with Mr. Croſsfield, at this time, did you?

A. I did not.

Q. Do you know whether Mr. Cleverton meſſed with him?

A. I believe he did.

Q. Do you know Captain Collins?

A. There was a Captain Collins there.

Q. Was he on board the Elizabeth priſon-ſhip?

A. I

A. I do not know; I remember a perſon of that name being there.

Q. You were afterwards removed from the Elizabeth priſon-ſhip to another—what ſhip were you removed to?

A. The ſhip I went on board of was the Peggy.

Q. What ſhip lay along-ſide, next the Peggy.

A. The Active Increaſe; they were laſhed along-ſide each other; they lay ſo cloſe that I jumped from one to the other.

Q. And they were both uſed as priſon-ſhips?

A. They were.

Q. Did Mr. Croſsfield go on board the Peggy with you?

A. He was on board the Peggy.

Q. Was Mr. Cleverton on board the Peggy?

A. He was.

Q. Was Captain Yellowley on board the Peggy?

A. I do not know that he was.

Q. Was Captain Collins on board the Peggy?

A. I do not remember any ſuch name on board the Peggy.

Q. Do you remember ſuch a name on board the Active Increaſe?

A. I do not.

Q. Captain Clarke was on board the Peggy?

A. He was.

Q. Now, from the time you were removed from the Elizabeth priſon-ſhip, in Breſt harbour, to the Peggy and Active Increaſe in Landernau river, till you came back to England, Croſsfield, yourſelf, Clarke, and Cleverton, were all on board the ſame ſhip?

A. Not all the time, they were not.

Q. But the greateſt part of the time?

A. I cannot ſay how long.

Q. At what time was any one removed?

A. Mr. Cleverton was ſick, and at the hoſpital, for ſome time.

Q. I believe, when any priſoners appeared to be ſick, or ſtated themſelves to be ſick, they were immediately taken from on board the priſon-ſhips to the hoſpital on ſhore?

 A. They

A. They were.

Q. So that if any of the priſoners on board theſe ſhips were taken with an accidental ſickneſs, they were removed to the hoſpital?

A. They were carried to the hoſpital on ſhore when they were very bad.

Q. Were they not carried on ſhore when there was any reaſon to ſuſpect they had any diſeaſe?

A. They let them be pretty bad firſt, and then they were taken on ſhore.

Q. After Mr. Cleverton recovered, he came back to the priſon-ſhip?

A. Yes.

Q. And then he remained on board the Peggy till you all embarked on board the cartel for England?

A. Yes.

Q. Who commanded the cartel?

A. Captain Gallowley, or Yellowley, I do not know whether his name is with a Y or a G.

Q. Was Captain Collins on board the cartel?

A. I cannot tell whether he was or not; there was a Captain Collins, who commanded one of the tranſports there.

Q. Long before the return of the cartel, you knew that the perſon who was called "The Doctor," was Mr. Croſsfield?

A. Yes.

Q. And ſo did all the ſhip's crew?

A. I cannot pretend to ſay that; I ſaw his name wrote, and I ſaw him.

Q. I think you ſaid that he continued a priſoner under the name of Croſsfield till you came away?

A. Till nearly we came away.

Q. Of courſe he was known as a priſoner by the name of Croſsfield?

A. By the name of "The Doctor," in general.

Q. But any body that choſe to be ſatisfied about his real name, would know his name was Croſsfield?

A. Yes, there was no ſecret about it.

Q. You

Q. You ſaid the Captain's private trade and your private trade conſiſted of ſome cotton ſtockings?

A. Yes.

Q. Did they take up any conſiderable room in the ſhip?

A. I cannot ſay they did.

Q. They were eaſily ſtowed away?

A. There were three or four large trunks.

Q. They could have paſſed perfectly well for the clothes and wearing apparel of the perſons to whom they belonged?

A. I do not know for that, becauſe a perſon could not wear a conſiderable number of ſtockings and all that.

Q. Upon your oath, were not thoſe articles conveyed on board the priſon ſhips, and made the ſubject of ſale, by the different perſons who had been taken priſoners?

A. There was a trifle which they had, which they broke open.

Q. There was a trifle taken and ſold?

A. The ſhip's crew got them among them.

Q. Was there any quarrelling and any diſpute about them?

A. I do not remember any.

Q. Do you remember Mr. Croſsfield making any obſervation about it?

A. I do not.

Q. Had you never any words with Mr. Croſsfield upon that ſubject?

A. I never had any words with Mr. Croſsfield to my knowledge.

Q. You are perfectly ſure that there never were any words between you and Mr. Croſsfield upon this ſubject?

A. I do not know that I ever had a word in anger with him.

Q. Did you ever hear him tell the people that had thoſe ſtores that he would inform the underwriters that they never had been captured?

A. I never did.

Thomas Dennis, (ſworn.)

Examined by *Mr. Wood.*

Q. Were you Chief Mate of the Pomona?

A. Yes.

Q. Did you ſail in her from Portſmouth?

A. Yes, the latter end of January.

Q. Do you remember the day?

A. No; I believe between the 29th and 31ſt.

Q. Did the priſoner ſail in the ſhip with you?

A. He did.

Q. In what capacity?

A. As ſurgeon.

Q. What name was he called by?

A. I did not rightly know his name; he went always by the name of "Doctor."

Q. How ſoon did you know his name?

A. Not till we got into France.

Q. Was the Pomona captured?

A. Yes, on the 16th of February, by the La Vengeance, a corvette.

Q. Where was ſhe carried into?

A. Into Breſt.

Q. Had you ever ſeen the priſoner before he came on board at Portſmouth?

A. Never.

Q. In the courſe of your voyage, did you ever hear him ſay any thing about what would be done if it was known where he was gone?

A. Yes; the night after we ſailed from Falmouth, he ſaid—"if Pitt knew where he was, he would ſend a frigate after him;" moreover—"that Pitt would have been ſhot, only he croſſed ſome bridge in the room of Weſtminſter bridge;" the bridge I have forgot.

Q. Did you ever hear him ſay any thing about his Majeſty?

A. Yes; I heard him ſay—"his Majeſty was to be aſſaſſi-

nated

nated at the play-houſe with a dart blown through a tube, and that he knew how the dart was conſtructed."

Q. Did he tell you how it was conſtructed?

A. No, I heard nothing further about the dart.

Q. Did he ſay any thing about the form of it?

A. No, I never heard him mention any thing about the form; I believe he mentioned ſomething about—"its being in the ſhape of a harpoon;" but I cannot tell particulars.

Q. Did you hear him ſay any thing more upon that ſubject?

A. Nothing more about the King.

Q. Did you underſtand from him what was to be done with this dart?

A. No more than he ſaid—"his Majeſty was to be aſſaſſinated by it."

Q. Did he ſay any thing about the conſtruction of the tube?

A. No further than—"that the dart was to be blown through a tube."

Q. After the capture, did you hear him ſay any thing about his being glad to leave England?

A. When we were firſt taken, Croſsfield took me by the hand, and ſaid—"he wiſhed I might get a ſhip ſafe to England, he was glad he was going to France, and was happy he had got out of England."

Q. On your arrival at Breſt, was there any muſter taken?

A. Yes, the liſt of priſoners was made out, and ſent on ſhore to the war-office.

Q. Did Croſsfield ſign his name?

A. Yes; "R. T. Croſsfield;" and he ſaid—"he had no occaſion to be aſhamed," or "to be afraid," I am not ſure which, "of his name now."

Q. How long did he go by that name?

A. All the time he was in France.

Q. Did he change it to any other name?

A. Yes; the day the liſt of priſoners was made out to be ſent to England, he changed his name to "H. Wilſon."

Q. Did you see the list in which the name of H. Wilson was entered?

A. Yes, I over-hauled it; it mentioned—" his being captured in the Hope Brig," instead of the Pomona.

Q. By what ship was it mentioned he was captured?

A. By the same ship, the La Vengeance.

Q. Was that in his own hand-writing?

A. Yes.

Q. Did you hear the list called over?

A. I did.

Q. Who called it over?

A. The Commissary from Brest.

Q. What name was he called by?

A. H. Wilson.

Q. Did he answer to that name?

A. Yes, and he walked aft directly.

Q. Were you the person that gave information to the magistrate of Crossfield?

A. No; I heard of it upon the road, as I was coming from Cornwall to town, at a place called St. Austle, or at Bodmin—at Bodmin, I believe.

Q. Who did you inform of this?

A. I was subpœna'd before the Privy Council.

Q. But to whom did you give intelligence of what had passed?

A. To nobody; I never mentioned it before.

Q. You did not go before any magistrate?

A. No, I never mentioned his name to any body till I was subpœna'd; I was going to sea the next day.

Thomas Dennis,

Cross-examined by *Mr. Gurney.*

Q. You sailed from Falmouth on the 13th, and were taken on the 15th—How many days were you upon your Voyage to Brest, after you were taken?

A. I believe we got into Brest on the 22d or 23d.

Q. Then

Q. Then you were ſeven or eight days upon your voyage?

A. Yes.

Q. Do you recollect any plan being formed in the courſe of that voyage, among the Engliſh priſoners, to ſeize the French ſhip?

A. I do.

Q. Were you concerned in that plan?

A. Yes.

Q. Was Captain Clarke concerned in it?

A. Yes.

Q. And Mr. Croſsfield?

A. Yes, I believe he intended to be one.

Q. In fact, you all meant to riſe upon the French, and to ſeize the ſhip?

A. Yes.

Q. Were you of that party in which Mr. Croſsfield was to be?

A. The people were to be upon deck, and thoſe in the cabin were to ſeize the arms in the cabin.

Q. You were put on board the Elizabeth in Breſt Harbour?

A. Yes.

Q. Near which there were the L'Achille and the Normandy?

A. Yes.

Q. The Corvette took another veſſel after ſhe had taken you, before ſhe got back to Breſt?

A. Yes.

Q. What was the name of that other veſſel?

A. The Hope Brig.

Q. Who was Captain of her?

A. Mr. Faulkner.

Q. Was Mr. Cleverton on board that veſſel?

A. He was?

Q. Was he put on board the Elizabeth with you and Mr. Croſsfield?

A. He was.

Q. How long did he remain on board the Elizabeth?

A. As long as we ſtaid.

Q. Were

Q. Were Captain Yellowley and Captain Collins on board the Elizabeth?

A. No.

Q. They were Captains of cartels?

A. Yes, in Landernau river.

Q. The Active Increaſe was cloſe to the Peggy?

A. Along-ſide of her.

Q. Captain Yellowley and Captain Collins were Captains of two cartels near you?

A. Yes.

Q. You had acceſs to theſe veſſels?

A. Sometimes.

Q. Mr. Croſsfield, after ſome time, left the Peggy?

A. Yes.

Q. On board what ſhip did he go?

A. One of the ſhips in which Captain Collins, Captain Yellowley, or Captain Alexander were—I cannot tell which.

Q. Who was Captain of the Active Increaſe?

A. Captain Fearnley: he died.

Q. You were enabled, by the politeneſs of the French Captain, to ſave ſome part of the private trade of the Captain and of yourſelves?

A. Yes.

Q. What did that private property conſiſt of?

A. Stockings, chiefly.

Q. Some watches?

A. The Captain ſaved ſome watches.

Q. And jewellery—ſome trinkets?

A. Yes.

Q. Was this property inſured?

A. I do not rightly know.

Q. Do not you know that?

A. I had none of my own inſured.

Q. Do you not know that Captain Clarke's was inſured?

A. I have heard it was.

Q. Theſe articles were afterwards the ſubject of traffic on board the priſon-ſhip—were they not?

A. Yes.

A. Yes.

Q. You recollect ſome obſervations being made by Mr. Croſsfield, reſpecting this being a fraud upon the underwriters?

A. Not to my recollection.

Q. Try and rub up you recollection a little?

A. It never concerned me.

Q. I aſk you whether Mr. Croſsfield did not expreſsly charge you and Captain Clarke with defrauding the underwriters, by the ſale of theſe articles?

A. Never me; he did not charge me.

Q. Did you never hear him charge Captain Clarke?

A. No.

Q. Had you never any words with him upon the ſubject?

A. No.

Q. That you are ſure of?

A. Yes.

Q. Then if any body ſhould ſwear that you had, they will ſwear what is untrue?

A. Yes; if they ſwear I had any words with the Doctor upon that ſubject.

Q. Or he any words with you?

A. Or he any words with me.

Q. Was there no quarrel between you and Mr. Croſsfield while on board that ſhip?

A. No, I do not rightly know; I never exchanged fifty words with him to my knowledge, all the time we were in France.

Q. How many did you exchange with him before you went to France, fifty more?

A. I cannot ſay.

Q. Perhaps you were not in habits of great intimacy?

A. My ſtation was on deck; his ſtation below.

Q. Did any words paſs between you, reſpecting any negligence of your's, by which the ſhip was taken?

A. Never, to my face; I heard he had ſaid ſo behind my back. I was informed ſo, I never heard it from himſelf.

Q. Did you never talk with him upon that ſubject?

A. No.

A. No.

Q. You are ſure of that?

A. Yes.

Q. Are you quite ſure that it was not on account of diſputes and quarrels between you, Mr. Croſsfield and Le Bretton, that Mr. Croſsfield was removed on board another ſhip?

A. No, there was not.

Q. There were no diſputes between you, Le Bretton and Mr. Croſsfield?

A. No.

Q. That you are quite certain of?

A. Yes, I am.

Q. You underſtood that Mr. Croſsfield, behind your back, had blamed you for the capture of the ſhip?

A. Yes, I heard he had ſaid it was my fault that the ſhip was taken, my not making ſail; but he never mentioned that to my face.

Q. Mr. Croſsfield I believe lived conſtantly on board the Elizabeth with Mr. Cleverton, Captain Clarke, and thoſe perſons?

A. He did.

Q. He meſſed with them?

A. At the ſame table.

Q. Was he in conſiderable intimacy with any of them?

A. Not remarkably, that I took any notice of.

Q. However he did daily and hourly aſſociate with, and meſs with them?

A. Yes.

Q. You were miſerably off in theſe priſon-ſhips for want of proviſions?

A. No, I cannot ſay I ever wanted proviſions while I was there.

Q. Had you never any bad proviſion there?

A. Yes.

Q. Bad proviſion and confinement were not very pleaſant to you I ſuppoſe?

A. No.

Q. Did you ever take any ſteps whatever for getting your liberty?

A. No,

A. No.

Q. Did you ever ſtate to the French, either directly or through the medium of Mr. Croſsfield, that you were an American?

A. Yes.

Q. Did you forge a certificate of your being an American?

A. I did not forge any.

Q. I do not mean to uſe an offenſive word; you did write a certificate purporting that you were an American?

A. I wrote to the Conſul.

Q. Did the Conſul give you any aſſurance that he would endeavour to paſs off that certificate for you as an American?

A. Mr. Croſsfield told us before we got to France, that he would procure us all our liberty.

Q. Did not he ſtate that he was a naturalized Hollander?

A. Yes, he wrote that.

Q. Do not you recollect that he wrote to Leyden, to aſcertain that he had a diploma from that Univerſity, and therefore was a naturalized Hollander?

A. I recollect he wrote to ſome place, but what place I cannot ſay.

Q. Was Mr. Croſsfield a man of the moſt grave and ſerious deportment imaginable?

A. No.

Q. I believe he was very much the contrary?

A. He was a man that drank very much.

Q. I mean was he a man of grave deportment, or of a good deal of levity?

A. Very much levity in talking.

Q. Talking and rattling a good deal?

A. Yes.

Q. You hardly knew ſometimes whether he was in jeſt or earneſt?

A. Indeed I did not pay much attention to him.

Q. On that very account?

A. No; from his bad principle altogether.

Lord Chief Juſtice Eyre. If the priſoner had choſen to have ſtaid in France, might he not have ſtaid there?

A. I

A. I cannot ſay.

Lord Chief Juſtice Eyre. Did they oblige the crew to go on board the cartel ſhips, if they had expreſſed any inclination to ſtay?

A. I never heard any body ſay they had an inclination to ſtay.

Mr. James Winter, (ſworn)

Examined by *Mr. Fielding.*

Q. You were I believe maſter of a veſſel called the Suſanna?

A. I was the owner of both ſhip and cargo.

Q. On your paſſage from Newfoundland you were captured?

A. Yes; by a French frigate and two ſloops of war.

Q. Were you carried into Breſt by this French frigate?

A. I was.

Q. You came from Newfoundland?

A. Yes; and was bound to Spain or Portugal.

Q. Do you recollect the time when you arrived at Breſt?

A. I was taken on the 6th of December, and arrived at Breſt on the 13th I think.

Q. What became of you when you were carried to Breſt?

A. I was on board a priſon ſhip ſometime, and afterwards was removed into Breſt Caſtle.

Q. During your being at Breſt, did you at any time ſee Croſsfield the priſoner?

A. I was carried on the 20th of March up Landernau river, there were three Engliſh cartels laſhed together, I was put on board one of them.

Q. Were you on board any ſhip where you ſaw Croſsfield?

A. Croſsfield came on board the ſhip I was in, I think on the 2d or 3d of April, it was the beginning of April.

Q. On board what ſhip did he come to ſee you?

A. The Revolution Brig, Captain Yellowley.

Q. Did any thing paſs between you at that time?

A. Captain Yellowley introduced him to me, as Mr. Croſsfield—he ſaid, "his name was not Croſsfield, but Tom Paine"—and laughed.

Q. What did you ſay to him, upon his ſaying that?

A. I

A. I ſaid nothing to him—after he had been at ſupper he began to ſing ſome very bad ſeditious ſongs.

Q. Did any thing afterwards paſs relative to his Majeſty, the King of England?

A. Yes.

Q. What paſſed on that ſubject?

A. He ſaid "he ſhot at his Majeſty, but unluckily miſſed him."

Q. Did he ſay where?

A. He ſaid it was "between the Palace and Buckingham-houſe." I aſked him ſometime after, when he and I were walking the quarter-deck—where was you when you ſhot at his Majeſty, he heſitated ſometime, and then ſaid, between Buckingham-houſe and the Palace.

Q. Did you continue the converſation with him upon this ſubject; did you aſk him any other queſtion?

A. No; it was his conſtant ſubject every day after dinner, and after ſupper; I dined and ſupped with him every day, ſometimes on board one ſhip, ſometimes another, for five months together.

Q. Then, as you had a great many opportunities of hearing this gentleman's declarations, did you ever hear him ſay any thing more, relative to his Majeſty?

A. Yes.

Q. In the general, in what way did he ſpeak of him?

Mr. Adam. I hope your Lordſhip does not think that any thing with reſpect to this man's converſation, that does not go to the point in queſtion, is evidence?

Mr. Fielding. Does your Lordſhip call upon me to ſuſtain the propriety of aſking a witneſs queſtions of this nature—having eſtabliſhed the ground immediately relative to the charge, ſurely I am at liberty now to prove the deportment of this man, and what he has ſaid, with reſpect to his Majeſty, at any other time, ſubſequent to that ſubſtantive evidence, I have offered already?

Mr. Adam. My learned friend has only aſſerted his right, he has not argued it, and therefore, it would be idle in me to argue it.

Lord

Lord Chief Juſtice Eyre. If it is preſſed after the fact is eſtabliſhed, I cannot ſay that general converſation, importing his ſedition and enmity to the King, is not in corroboration of the fact before ſtated; it is to be conſidered what effect even this declaration, now proved, will have; it is a declaration totally different from that which is proved by the former witneſſes, and has no relation, indeed, to the particular charges in this indictment.

Mr. Attorney General, I certainly ſhall not preſs it.

Mr. Fielding. Did he ſay with what weapon he had ſhot at his Majeſty?

A. No.

Q. Did he give any deſcription?

A. He ſaid, he had a thing, which I underſtood him he had ſhot at him with, ſomething as large as that candleſtick, and as long as the candle and candleſtick together, which was like a pop-gun, round and hollow, about a foot and a half long; he ſaid, " he intended to put ſome poiſoned darts in it; that he had ſhot at a cat and killed her; that the cat expired in a few minutes afterwards in great agonies;" he ſaid, " it would kill any man at thirty yards diſtance, and nobody could perceive that he had done it;" this he repeated fifty times, while I was in his company.

Q. When you were in company with him, were there other people in company with him alſo?

A. Yes, there were nine of us dined together every day.

Q. Was this converſation before other people too?

A. Yes.

Q. And not confined to you?

A. No; except at certain times when he and I have been walking the quarter-deck, and we have talked it over together; he ſhewed me in what manner they were made, with his finger in ſome wet upon the table; he ſtroked with his finger as if there were hairs in it; he ſaid, " they opened when it ſtruck, and ſomething flew out and let the poiſon in."

Q. When the arrow penetrated, the poiſon came out?

A. " That as ſoon as the arrow ſtruck, the poiſon came out of the dart."

Q. Had

Q. Had you any converſation about where he got the poiſon?

A. He ſaid, "he prefcribed it;" but I do not know the place where it was bought; he ſaid, "he was the very perſon that ordered it to be made up."

Q. What, do you mean the poiſon?

A. Yes, "the poiſon to be mixed."

Q. Did he ſay what ſort of poiſon it was?

A. He ſaid, "he got it at a ſhop."

Q. Did he ſay for what purpoſe he had got this poiſon?

A. To fire at his Majeſty.—He ſaid, "he had fired at his Majeſty;" but he never ſaid it was with that that he fired at him; he ſaid, "he fired at him but unluckily miſſed him;" I heard him ſay that fifty times; that, "he damn'd unluckily miſſed him;" ſometimes he ſaid, "it was very unlucky."

Q. Was this deſcription likewiſe given by him to the people who were preſent, when he dined with you, or was in company with you?

A. There was nobody in the cabin with me when he made that remark; the Captain and ſome of them were gone on board the French Commodore, and ſome were on board the other ſhips; he and I were ſitting at the table drinking ſome grog.

Q. Did you, during thoſe five months, aſk him any further explanation of thoſe things or not?

A. No, I never did, I was afraid to do it; I only aſked him one queſtion when we were walking the quarter-deck together, where he was when he ſhot at the King; he ſaid, "he was between Buckingham-houſe and St. James's;" after he had heſitated ſome time, he ſaid, "I was between Buckingham-houſe and St. James's Palace."

Q. Do you remember having any converſation with him in Auguſt?

A. Yes.

Q. Did he ſay any thing about his wiſhes, relative to the people in London, and his Majeſty?

A. He ſaid, "he hoped he ſhould live to ſee the day when the

ſtreets of London ſhould be up to his ancles in the blood of the King and his party."

Q. Was this ſaid in the preſence of more perſons than yourſelf?

A. Yes.

Q. Do you recollect the names of any gentlemen who were preſent when he made this declaration?

A. Yes; I recollect one gentleman ſaid, God forbid, matters may be done more eaſily.

Q. Who was that?

A. Captain Yellowley.

Q. Do you recollect any other perſons, by name, that were preſent?

A. No, none elſe.

Q. Did he ſay any thing about the chemiſt from whom the poiſon was purchaſed?

A. He ſaid, "he went to the chemiſt's and ordered how the poiſon ſhould be made up, and it was made up; that he made uſe of ſome, and ſhot at a cat, and the cat expired in a very ſhort time, or in a few minutes afterwards."—I believe I made a miſtake in ſaying it was in Auguſt, it was ſome time in July, I believe, that he made uſe of that expreſſion about his Majeſty.

Q. When this converſation had continued between you of his having ſhot at his Majeſty, did he ſay any thing of what became of himſelf, or what he was obliged to do?

A. He ſaid, "he was obliged to make off immediately to Portſmouth, where he went on board a South Sea-man, that in two or three days afterwards they fell in with a French frigate, and luckily were carried into Breſt."

Q. Did he ſay any thing about a purſuit being made after him by a King's Meſſenger?

A. He ſaid, "there were two King's Meſſengers after him—that he was purſued by two King's Meſſengers."

Q. When you firſt knew him at Breſt, by what name did he paſs?

A. By

A. By the name of Croſsfield only. At the time he introduced himſelf as Tom Paine; he ſaid, he went by the name of Tom Paine on board ſome other ſhips.—When he was given in to the liſt to come home in the cartel, he entered his name as "Henry Wilſon."

Q. You have ſaid there were ſeveral people in company with you at different times?

A. Yes.

Q. Endeavour to recollect all the converſation that paſſed when he ſaid he wiſhed to ſee the ſtreets of London flowing with blood?

A. That was his conſtant converſation all that night, till Captain Yellowley interrupted him, and ſaid, God forbid, matters may be done more eaſily.

Q. Was there any perſon elſe, in your company with Croſsfield, that ſaid any thing which drew an anſwer from Croſsfield?

A. No; Captain Collins, another time ſaid, he ſhould be happy if he could have the cutting off of the King, Pitt, and Parliament.

Q. Who ſaid ſo?

A. Captain Collins ſaid, he ſhould be happy to have the cutting off the head of both the King, Pitt, and the Parliament.

Q. What did Croſsfield ſay, in anſwer to that?

A. He ſaid, "have patience, have patience, I hope to have the cutting off ſome of them by and by myſelf."—Captain Collins ſaid, he wiſhed to have the cutting off both King, Pitt, and Parliament's head.—Croſsfield ſaid, have patience, have patience, I hope to have the cutting off of ſome of them by and by myſelf.

Q. When did you leave Breſt?

A. On the 27th of Auguſt.

Q. In what cartel did you come?

A. I came along with Captain Yellowley, in the Revolution.

Q. Do you know how Croſsfield came over?

A. He came in the ſame ſhip.

Q. How long was he embarked on board that ſhip before you ſailed from Breſt?

A. He was not long on board, I was on board the French Commodore with him; he, and Captain Yellowley, went on board the French Commodore half an hour, or an hour before we ſailed, when Croſsfield and Yellowley came out from the cabin, Croſsfield ſaid, " every thing now is ſettled to my own ſatisfaction:" that was ſaid upon the gang-way of the French Commodore.

Q. What became of him after this declaration?

A. One of the Captains, that was in the boat, held up his hand to ſtop him from ſaying any more.

Q. What Captain do you mean?

A. One of the maſters of the veſſel, Captain Wyatt, or Captain Lambton, I cannot ſay which; he further ſaid, at other times, that " the French had given him great encouragement, that they would provide for him;" he ſaid that fifty times, but he never explained more than that.

Q. What became of him afterwards?

A. Then he went on board the cartel, and we ſailed that very day.

Q. How long were you upon your paſſage to England?

A. Three days.

Q. During your paſſage, did any thing remarkable take place?

A. No, not a word, nor for many days before that, till the time we left the Commodore.

Q. How came it that nothing paſſed between you?

A. He was very cloſe, he did not offer to mention a word there; he never ſaid a word, I think, from the 18th or 19th of Auguſt, until the very day he left the French Commodore; he never ſaid a word, that ever I heard, he was always very cloſe.

Q. When you came to England where did you land?

A. At Mevagiſſy.

Q. Did you communicate this to any body?

A. I immediately enquired at a public-houſe at that place for a Juſtice of the Peace, the landlord told me there was a Juſtice at two or three miles diſtant, and he would go with me himſelf.

Q. Did you go to this Juſtice of the Peace?

A. I went immediately—I was not aſhore five minutes before I went to the Juſtice's, when we came to his houſe he was not at home; I ſaw the Juſtice afterwards, and laid an information againſt Croſsfield.

Q. What was done upon it?

A. He granted a warrant to have him apprehended; when they came down to apprehend him the next morning, the veſſel was gone over to Fowey, he was purſued to Fowey, and was apprehended.

Mr. James Winter,

Croſs-examined by *Mr. Adam.*

Q. May I aſk you what age you are?

A. Fifty-nine years of age.

Q. You belong to Newfoundland?

A. I am reſident at that place at preſent, but I was born in England, my family are at Newfoundland, and I carry on my buſineſs there.

Q. And you happened to be captured and taken into Breſt as a priſoner?

A. Yes.

Q. At what time were you captured?

A. On the 6th of December, 1794.

Q. You were brought on board this priſon ſhip after having been ſome time in Breſt Caſtle?

A. Yes; on the 20th of March, I went on board the Engliſh priſon ſhip.

Q. You have mentioned the names of two perſons on board that priſon ſhip, Captain Collins, and Captain Yellowley?

A. Yes.

Q. Can you recollect the names of any of the perſons who uſed to meſs with you at that time?

A. Yes.

Q. Was Captain Clarke one?

A. No.

Q. Which priſon ſhip were you on board?

A. The Berwick; Captain Alexander, Captain Collins, Cap-

tain Yellowley, Captain Lambton, William Byron, and Henry Byron, Richard Taylor, Croſsfield, and me.

Q. Where are thoſe gentlemen now?

A. I do not know; Captain Yellowley is in London, I believe.

Q. Where is Captain Byron?

A. I do not know.

Q. Where is the other Mr. Byron?

A. I do not know.

Q. Did they come over in the cartel with you?

A. Yes, all of them.

Q. You do not know where they reſide in England?

A. No; I believe in Shields, ſome of them.

Q. Did anybody ever aſk you where they reſide in England?

A. No.

Q. Have you never mentioned their names before?

A. Not to any Juſtice, only to the gentleman at Mevagiſſy, I mentioned them all to him.

Q. When you mentioned all of thoſe perſons to the Juſtice, at Mevagiſſy, did you ſtate that they had come home with you in the cartel ſhip?

A. Yes.

Q. Did you tell him that they were the perſons with whom Crosfield and you had been in company?

A. Yes; I did not mention them as if they had been of a party.

Q. I do not want you to accuſe thoſe gentlemen, I only want to know whether you told the Juſtice that all thoſe gentlemen, you have mentioned, were conſtantly in your, and in Croſsfield's ſociety, at this time?

A. Yes; all of them excepting Captain Alexander, and he remained there.

Q. Thoſe Mr. Byrons were very reſpectable men, were they not?

A. They ſeemed very well there.

Q. They lived in the meſs with you?

A. Yes.

Q. Perhaps

Q. Perhaps you thought nobody ſo reſpectable as yourſelf.—Theſe people all came over with you, and the Magiſtrate, in Cornwall, to whom you diſcovered this whole buſineſs, knew perfectly well that they had all come with you, and had all been in the ſociety, in which thoſe things you have mentioned had paſſed?

A. They did not remain in the veſſel an hour after.

Q. But they landed at Fowey?

A. Yes.

Q. And they were part of the family that dined with you every day there?

A. Yes.

Q. Do you remember Captain Clarke?

A. I remember there was ſuch a name, but I was not acquainted with him.

Q. Did you never go on board the Peggy?

A. No.

Q. You ſay, when you were firſt introduced to Mr. Croſsfield, that he called himſelf Tom Paine; had you lived enough with Mr. Croſsfield, at that time, to know his manner of life?

A. No.

Q. Afterwards you came to know pretty well how he lived?

A. When he came to ſing thoſe ſongs I withdrew immediately, and went on board my own ſhip.

Q. Were you enough acquainted with him to know that he accuſtomed himſelf to ſtrong liquors?

A. Yes, when he could get it; but he could not get it there, he would drink it if he could get it.

Q. How long was it from the time you firſt became acquainted with Mr. Croſsfield till you came away?

A. About five months.

Q. And he lived in intimacy with you, and thoſe other gentlemen, all the time?

A. Yes; he dined and ſupped with thoſe gentlemen every night, unleſs they happened to be on board the Commodore, or on ſhore.

Q. Conſequently all thoſe gentlemen lived with him too, all thoſe five months?

A. Yes.

Q. Therefore every ſingle thing you know they muſt have known, excepting the private queſtion you aſked him, where he ſhot at the King?

A. They muſt have known the main part; there was nobody in the cabin but me when he told me about ſhooting at the cat with a dart.—There was a little of the grog dropped on the table, he marked with his finger, and ſhewed me in what manner he made it.

Q. Do you remember any thing about the ſtory of a hare, perhaps you may think it odd you ſhould be aſked that queſtion?

A. No.

Q. You do not remember any thing of a ſtory that uſed to entertain the company very much, about a hare jumping into your lap?

A. No, only into my arm.

Q. What was that ſtory?

A. I was coming through Uplime to Lime, in my way from Axminſter, juſt as I got to a wall, I ſtopped to make water, as I was buttoning up the fall of my breeches, a hare came through my arm, I catched him by the leg and turned him round, it was about twelve o'clock at night, I threw him in over the gate in among a parcel of dogs, and he remained there that night, and the next day, juſt as the parſon was going away to church, the hare got out, and the dogs followed it all through Lime, there they catched the hare and it was carried up.

Q. Then you threw the hare over the wall among the dogs?

A. Yes.

Q. How long did the hare remain among the dogs?

A. Till after dinner.

Q. This was a ſtory that uſed to amuſe the company very much?

A. Yes;

A. Yes; I have told it oftentimes.

Q. What did you take this hare to be?

A. I could find nothing of him till after I was going to church; I was juſt got as far as the ſhambles when I heard the dogs out in full cry after the hare.

Q. After ſhe had lodged very comfortably among them for many hours?

A. Yes; after the bones had been carried out to the dogs, which, I ſuppoſe, drew the dogs out.

Q. What did you tell thoſe gentlemen you took this hare to be?

A. To be a hare.

Q. How did you think this extraordinary hare could live ſo long among the dogs without being deſtroyed?

A. If you ſend to Lime, if any gentleman diſputes my veracity, there they will get a voucher for it.

Lord Chief Juſtice Eyre. The gentleman aſks you what you took the hare for; I ſuppoſe he means to aſk you whether you took her for a witch?

A. They ſay the place is troubled; now I took it to be an old hare.

Mr. Adam. Did not you uſe to tell thoſe gentlemen, in the courſe of converſation, that you took this hare to be a witch, or the devil in the ſhape of a hare?

A. No; it was an old hare that had been hunted many times by the dogs, and they never could catch him; if you want a voucher for it, if you ſend to Lime, you may get vouchers.

Lord Chief Juſtice Eyre. Where did you throw this hare into?

A. Over a place ſeven feet high, among a kennel of hounds, and it was twelve o'clock at night.

Mr. Adam. Were you ever ſworn before a Jury before?

A. I have been upon a Grand Jury twenty-five years.

Q. I aſk you, whether you were ever ſworn as a witneſs in a Court of Juſtice before?

A. Many times.

Lord Chief Juſtice Eyre. A Grand Jury, where?

A. In St. John's, Newfoundland.

Mr.

Mr. Attorney General. You raiſed a corps of troops in Newfoundland?

A. Yes.

Q. Of how many?

A. During the American war I raiſed fifty; and during this war ſixty-nine: I ſupported fifty men myſelf during the whole American war.

Richard Penny, (ſworn.)

Examined by *Mr. Abbot.*

Q. You were Maſter at Arms of his Majeſty's ſhip Active?

A. Yes.

Q. You were taken priſoner, and carried into Breſt?

A. Yes.

Q. What was the priſon-ſhip you were on board of there?

A. The Elizabeth.

Q. Was the priſoner Croſsfield on board the ſame ſhip?

A. I know the priſoner if I ſee him.

Q. Do you ſee any body there whom you remember to have ſeen on board the priſon-ſhip?

A. I know the man if he ſtands up, in a moment.

Mr. Abbot. Go down, and walk round among the people, and look for him. (*The witneſs pointed out the priſoner.*)

Q. Do you remember hearing him ſing a ſong?—I do not aſk what it was.

A. Yes.

Q. Do you remember having any converſation with him the next morning, in conſequence of having heard him ſing that ſong?

A. Yes.

Q. Did you ſay any thing to him, upon that occaſion, reſpecting the King of England?

A. The ſong was—"damnation to the King;" I aſked him what King, he ſaid—"the King of England."

Q. What obſervation did you make to him upon that?

A. No more.

Q. What

Q. What further did he ſay relating to the King of England?

A. He mentioned ſomething in the ſong about Mr. Pitt.

Q. But what did he ſay next morning further concerning the King of England?

A. I ſaid, Doctor, you never can be a true Engliſhman, to ſing that ſong; he ſaid—" he was one of the ringleaders of the three that attempted to blow the dart at his Majeſty in Covent Garden."——If Mr. Croſsfield does not remember me, I will put on my jacket I wore in the French priſon with him.

Q. Did he expreſs any ſorrow at being a priſoner in France?

A. No; he ſaid—" Tom Paine's works were the beſt works"———

Mr. Adam. I ſubmit to your Lordſhip, whether we are to hear every part of this converſation?

Lord Chief Juſtice Eyre. Having proved that the priſoner ſaid he was one of the three who attempted to blow the dart at the King, in Covent Garden, I take it to be within the rule the Court has already laid down, when a fact which does apply to the charge is proved, that what goes ſo far to the ſame ſubject as to be corroborative is evidence.

Mr. Adam. My objection was, that the priſoner ſaid Tom Paine's works were the beſt works.

Lord Chief Juſtice Eyre. That, ſtanding alone, would not be any thing, you muſt hear the ſentence throughout: but you broke in juſt as ſomething was coming that was material.

Mr. Adam. Then, can Tom Paine's works be a ſubject for the conſideration of the Jury?

Lord Chief Juſtice Eyre. Certainly not: but if a man puts two things into one ſentence, you muſt neceſſarily hear both, and reject that which does not apply.

Mr. Abbot. What more did he ſay?

A. He ſaid—" Tom Paine's works were the beſt works he could buy; and that if ever he arrived in England he would attempt to do the like again."

Q. When you returned to England in the cartel ſhip, did the priſoner return with you?

A. He

A. He did ſo.

Q. Did he ſay any thing to you, on board that ſhip, as you returned home?

A. Before he came out of Breſt he muſtured me on board; I was cloſe to the main-maſt, on the Elizabeth's deck; and before we came in to Mevagiſſy, he ſaid to me—"Young man, was not you on board the Elizabeth?" I told him I was; "he deſired I would take no notice of what was ſaid on board of the Elizabeth."

Q. How come you to give evidence upon this occaſion?

A. For my King and Country.

Q. Did you give information to any body of this?

A. I gave information to a gentleman at Portſmouth?

Q. Did you lay any information before any magiſtrate?

A. I ſwore it before a magiſtrate.

Lord Chief Juſtice Eyre. How ſoon after you landed did you mention this at Portſmouth?

A. I mentioned it at Portſmouth to a gentleman on board of the Royal William; he perſuaded me to go to Mr. Greetham, the King's Solicitor there: I went as ſoon as I had an opportunity.

Richard Penny,

Croſs-examined by *Mr. Gurney.*

Q. When did you firſt go on board the Elizabeth priſon-ſhip?

A. On the 22d of December, 1795.

Q. You found Mr. Croſsfield on board that ſhip?

A. I did not.

Q. On board what ſhip was he?

A. I underſtood he was on board a ſouth-ſea man.

Q. I am aſking about the priſon-ſhip—Did you find Mr. Croſsfield on board the priſon-ſhip?

A. He came on board the Elizabeth.

Q. How ſoon after you were there?

A. He came in March.

Q. Then

Q. Then it muſt have been in December, 1794, not 1795, when you firſt went on board the Elizabeth?

A. Yes.

Q. It was ſome months after you were on board the Elizabeth before Mr. Croſsfield came there?

A. Yes.

Q. How long was he on board that ſhip?

A. Above a month before he went up to Landernau.

Q. How many perſons were of the Captain's meſs on board that ſhip?

A. He meſſed cloſe to the wheel.

Q. Who were the perſons in his meſs?

A. One of the witneſſes in the Court was one that meſſed with him.

Q. Point him out.

A. He is not here.

Q. Do you mean Dennis?

A. Yes.

Q. Was Captain Clarke one?

A. I cannot rightly ſay.

Q. How many were there of them in the meſs?

A. Seven.

Q. Were you in that meſs?

A. No.

Q. You were on board the ſame ſhip?

A. Yes.

Q. Did you talk with Mr. Croſsfield?

A. No, only after that ſong.

Q. Had you any converſation with him at any other time?

A. No, only thoſe words upon the poop.

Q. Had you any converſation with him at any other times?

A. No, becauſe he went from the Elizabeth up to Landernau.

Q. You were a month with Mr. Croſsfield in that priſon-ſhip—had you any other converſation with him than that which you have told us?

A. He declared more to me at that time.

Q. I am aſking whether he had other converſations with you beſides that time?

A. Not after that time.

Richard Penny,

Re-examined by *Mr. Abbot.*

Q. You ſay he declared more to you—what did he declare more?

A. When we were coming home, he begged me not to ſay any thing about what he had ſaid to me; after we were muſtered on board the cartel, I ſaw Mr. Croſsfield in very cloſe conference with the French officer abaft the poop, and they ſhook hands together; that was a gentleman that came from Breſt.

Lord Chief Juſtice Eyre. Have you any thing more to ſay?

(The witneſs gave no anſwer.)

Lord Chief Juſtice Eyre. Did you hear my queſtion?

A. Yes, my Lord.

Lord Chief Juſtice Eyre. I am waiting for an anſwer—What did he ſay more?

A. I ſuppoſe your Lordſhip has got down, that after he had ſung a ſong, wiſhing damnation to the King, I aſked him what King, and he ſaid the King of England——that he ſaid he was one of the ringleaders of the three that attempted to blow the dart at his Majeſty in Covent Garden, and that if ever he arrived in England he would endeavour to do the like again——that he ſaid Tom Paine's works were the beſt works he could buy ——that he deſired me not to take any notice of what he ſaid on board the Elizabeth, that he was one of the three.

Walter Colmer, (ſworn.)

Examined by *Mr. Law.*

Q. You live at Fowey, I believe?

A. Yes.

Q. Do you remember, on the 31ſt of Auguſt laſt, being employed to apprehend Croſsfield?

A. Yes.

Q. Who aſſiſted you in apprehending him?

A. Mr.

A. Mr. Stocker.

Q. Where did you take him?

A. On board the cartel lying at Fowey.

Q. Did he anſwer to the name of Croſsfield?

A. He did.

Q. Were you employed in carrying him to Bodmin gaol?

A. Yes.

Q. Do you recollect having any converſation with him upon the road?

A. Yes; he ſaid—"he would give us a guinea to let him go, and take the irons from his hands; that we ſhould only have a few ſhillings for carrying him to Bodmin, and he would give us a guinea each to let him go:" ſome time after that, he offered us two guineas each; I aſked him what he would do with the driver, he told me—"if I would let him have one of the piſtols, he would pop at him, and ſoon ſettle that buſineſs."

Lord Chief Juſtice Eyre. You had piſtols with you in the chaiſe?

A. Yes.

Mr. Law. I take for granted you did not do what he deſired—neither take the money nor lend him the piſtols?

A. No.

Walter Colmer,

Croſs-examined by *Mr. Adam.*

Q. What ſtate was he in, at the time you took him on board the ſhip?

A. That was in the morning—it was in the evening when we were going to Bodmin.

Q. What ſort of condition was he in then?

A. Whether he was in liquor or not I won't ſay for that.

Q. Now, don't you think he was very much in liquor?

A. He might be a little in liquor, but I do not think he was very much.

Elizabeth

Elizabeth Upton, (ſworn)

Examined by *Mr. Garrow.*

Q. You were the wife of a perſon of the name of Thomas Upton?

A. Yes.

Q. Who has been under examination before the Privy Council?

A. Yes.

Q. Where did you reſide at the time you laſt ſaw your huſband?

A. In Wapping.

Q. When did you ſee him laſt?

A. On the 22d of February.

Q. That, I believe, was on a Monday?

A. It was.

Q. At what hour in the morning did he leave his home?

A. Between eight and nine.

Q. Did you ever ſee him afterwards?

A. No, never.

Q. Have you ſince ſeen any article of wearing apparel which he wore at the time he left his home?

A. No.

Q. His hat, or any thing elſe?

A. Yes, I have ſeen his hat; the waterman brought it me the next morning.

Q. What is the name of the perſon that brought it?

A. Thomas Annis.

Q. He brought a hat which your huſband had worn when he went from home?

A. Yes.

Q. Had your huſband given you any thing when he went from home the laſt morning?

A. He gave me a ſeal.

Q. Was that a ſeal which he uſually wore?

A. Yes, which he uſually ſealed his letters with.

Q. Have you never ſeen him ſince?

A. I

A. I have not, nor heard of him.

Q. Except by the information of this waterman?

A. Yes.

Q. Have you any reason to know or believe that he is now alive, or do you believe he is dead?

A. I believe he is dead—I know nothing to the contrary.

Q. Was he a man addicted to drinking, or a sober man?

A. I never saw him disguised in liquor in my life.

Lord Chief Justice Eyre. I do not see the necessity of this evidence.

Mr. Attorney General. I stated Upton's giving information as an accomplice, and I gave as a reason why I could not produce him here, his being dead.

Lord Chief Justice Eyre. I should have taken it upon your assertion, not as a subject of evidence, that you do not call him, because he is dead.—If that were controverted in any way to raise a question upon it, to be sure you would be at liberty to prove it.

Mr. Garrow. If your Lordship is satisfied that this is reasonable evidence of his death, we do not mean to go into any more of it.

Lord Chief Justice Eyre. Certainly.

Mr. Garrow. Do you know a person of the name of Crossfield?

A. Yes.

Q. Do you see him here?

A. Yes.

Q. Have you seen him, and seen him more than once, at your husband's house?

A. I have.

Q. Have you seen him there before your husband was examined by the Privy Council?

A. Frequently.

Q. Do you know Mr. Palmer the attorney?

A. Yes, I see him there.

Q. Have you seen him at your husband's house?

A. Yes, frequently.

Q. Have you seen him there in company with the prisoner Crossfield?

 A. Yes,

A. Yes.

Q. Be ſo good as look at this piece of wood (*the model for the tube*)—Did you ever ſee this before?

A. I think I have ſeen them lying in the ſhop in my huſband's houſe in Bell-yard.

Q. Do you know a perſon of the name of Hill?

A. Yes.

Q. Do you recollect ſeeing him at your huſband's houſe?

A. I have ſeen him.

Q. Did you ſee this brought to your huſband's ſhop?

A. I ſaw ſomething brought one night by Mr. Hill which appeared to be like this—I believe this to be it.

Q. Look at this (*A long braſs tube*)—Did you ever ſee this before?

A. I do not recollect that ever I did.

Q. Caſt your eye upon that paper—Did you ever ſee that paper in your huſband's poſſeſſion?

A. I do not recollect to have ſeen any thing of this kind.

Elizabeth Upton,

Croſs-examined by *Mr. Gurney.*

Q. Where did you reſide, Mrs. Upton, at the time you laſt ſaw Mr. Upton?

A. In Wapping.

Q. Do you reſide there now?

A. No.

Q. Where do you reſide now?

A. In Gray's-inn-lane.

Q. Have you lived there ever ſince you loſt your huſband?

A. Yes.

Mr. Attorney General. It has been proved—I mean that evidence has been given to prove that Upton was concerned with the priſoner in ordering certain materials for this inſtrument, I am now going to prove Upton's poſſeſſion of ſuch a thing, and his poſſeſſion of the paper which contains the deſcription and draught of a bearded dart.

George

George Steers, (ſworn)

Examined by *Mr. Wood.*

Q. Where do you live?

A. In Gatwood's-buildings, Hill-ſtreet, Finſbury-ſquare.

Q. Are you a member of the London Correſponding Society?

A. No, nor never was.

Q. Did you ever attend any of their meetings?

A. I did once unfortunately attend one meeting, with two fellow-clerks of mine.

Q. When was that?

A. The latter end of the year 1794.

Q. In what month?

A. I believe it was about the month of Auguſt, but I am not certain.

Q. Did you know Mr. Upton?

A. I knew him no otherwiſe than by ſeeing him the night I attended that meeting; I never ſaw him before nor ſince.

Q. Did you ſit near him?

A. Yes; and a fellow-clerk of mine ſat next to him.

Q. What ſort of perſon was he?

A. I do not believe that I ſhould know him otherwiſe than his being lame in one foot.

Q. Did you obſerve any thing that he had with him?

A. I obſerved he held ſomething in his hand, which I thought from his being lame was a walking-ſtick.

Q. Did you aſk to ſee it?

A. No, not being a member of the ſociety, I had no right to aſk any perſon in the room any queſtion whatever.

Q. Did any body elſe aſk to ſee it?

A. A fellow-clerk of mine aſked him what it was, but I did not hear him give any anſwer for what purpoſe it was intended.

Q. Did he produce it?

A. He ſhewed it him in his hand.

Q. What was it?

A. I perceived by the light, that it was braſs.

Q. Was it any thing like that? *(the braſs tube)*

A. Yes; I made no particular obſervation of it, but from what I ſaw, it was in appearance the ſame as that—it is I believe, the ſame thing as was produced to me before the Privy Council; I made no mark on it, I believe it to be the ſame from its appearance.

William Henry Puſey, (ſworn)

Examined by *Mr. Wood.*

Q. Were you at the meeting of the Correſponding Society, with the laſt witneſs Steers, on the 16th of September, 1794?

A. I was with him; but I cannot ſpeak as to the time.

Q. Do you remember being with him one evening in September 1794?

A. I remember being there at the time, which I ſuppoſe you allude to.

Q. Do you remember being there one evening when Upton was there?

A. I do.

Q. Do you remember ſeeing any thing particular under Upton's coat?

A. Yes.

Q. What was it?

A. A tube.

Q. Was it like this? *(the braſs tube)*

A. Something reſembling this.

Q. Had you any converſation with Upton about it?

A. Yes, I aſked him what it was, I cannot ſay poſitively whether I ſpoke to him firſt or he to me, I think I aſked him firſt what it was, I ſaw a bit of it ſticking out from under his coat, he pulled it further out, that I could perceive it better; upon aſking him what it was, he did not give me any anſwer, but ſhook his head in that manner, *(deſcribing it)* he did not tell what it was for.

Q. Did you aſk him what it was for?

A. I did.

Q. Did

Q. Did he tell you, or refuse to tell you?

A. He did not say I won't tell you, but he ſhook his head and made no anſwer.

Lord Chief Juſtice Eyre. Did you take any notice whether it was hollow or not?

A. I think it was hollow.

Lord Chief Juſtice Eyre. Had you any opportunity of ſeeing the light through it?

A. No; but from the beſt of my recollection it was hollow.

Mr. Law. Did it appear to you to be a hollow or a ſolid inſtrument?

A. I do not think it was a ſolid inſtrument.

Edward Stacker, (ſworn.)

Examined by *Mr. Garrow.*

Q. I believe in the month of Auguſt laſt you were one of the conſtables of the Borough of Fowey?

A. Yes.

Q. Had you together with Mr. Colmer, the charge of the priſoner Croſsfield, to conduct him to Bodmin Gaol?

A. Yes.

Q. What is the diſtance from the place where you took him into cuſtody to the gaol?

A. About twelve miles.

Q. You went in a chaiſe?

A. Yes.

Q. State what converſation the priſoner addreſſed to you and your fellow conſtable in the courſe of your journey?

A. He offered us two guineas.

Q. State what he ſaid to you?

A. He ſaid, in the firſt place—"that it was better we ſhould "take a guinea each, and let him go,"—he ſaid, "he was "man enough for us both"—then he ſaid "he would give us "two guineas each,"—Mr. Colmer aſked him what we ſhould do with the driver; he ſaid, "lend me one of your piſtols, and "I will pop at him and ſettle that matter."

Q. Was there any converſation as to the quarter from whence the money was to come, if you would accept of it?

A. None at all; he ſaid, "he would give us a draft on ſome "perſon at Fowey,"—I aſked him if he knew any inhabitant, he ſaid, "he did not know any inhabitant at Fowey; that it "was a perſon at Fowey, but not an inhabitant."

Q. You conducted him ſafe to goal?

A. Yes.

Edward Stocker,

Croſs-examined by *Mr. Gurney.*

Q. At what time did you leave Fowey to go to Bodmin?

A. About nine in the evening.

Q. Mr. Croſsfield I believe was not very ſober at that time?

A. I do not know.

Q. Are you quite ſure that Mr. Croſsfield was perfectly ſober?

A. I do not know that he was in liquor, he might or might not.

Q. Are you not quite ſure that he was not ſober?

A. I am not ſure; I do not think he was much in liquor.

Q. Was not his manner of ſpeaking very queer?

A. I do not know as for his manner of ſpeaking.

Edward Stocker,

Re-examined by *Mr. Garrow.*

Q. You were not acquainted with Mr. Croſsfield before?

A. No.

Q. Had he had the means of getting intoxicated, as far as you know?

A. I do not know whether he had or not.

Q. Did he appear ſober enough to know what he was talking about?

A. I believe he was not diſguiſed in liquor; I do not know that he was.

Mr. Gurney. Did Mr. Croſsfield ſleep in the poſt-chaiſe?

A. He fell aſleep after we came about half-way.

Q. And ſlept on all the reſt of the way?

A. Yes.

Lord

Lord Chief Juſtice Eyre. At what time of day or night was it?

A. We ſet out at nine in the evening from Fowey.

Mr. Harvey Walklate Mortimer, (ſworn)

Examined by *Mr. Garrow.*

Q. You are a gun-ſmith, reſiding in Fleet-ſtreet?

A. Yes.

Q. For how many years have you been engaged in that buſineſs?

A. Thirty years; thirty and a half I believe.

Q. You have been uſed not only to the conſtruction of common fire arms, but to the conſtruction of the air gun?

A. Yes.

Q. Are air guns ſometimes conſtructed in the form of a walking ſtick?

A. Yes.

Q. Is it one of its properties to diſcharge and accompliſh its object of deſtruction without exploſion?

A. Not entirely without exploſion; if it is diſcharged where the air paſſes briſkly by, you cannot hear it yourſelf; but if it is in a confined room, where the external air does not paſs freely by, it makes a noiſe like that. *(clapping his hands together)*

Q. It would make leſs noiſe in the exploſion I conclude in a large theatre than in a ſmall room?

A. Certainly.

Q. Is it another property of an air gun, to have leſs recoil than the exploſion by gunpowder?

A. It has ſo little recoil, that if you were to hold it againſt your face with a glaſs upon you eye, you would not perceive it injure the glaſs.

Q. You might reſt it upon your cheek bone?

A. Upon your naked eye.

Q. So as to take a moſt accurate aim?

A. I have ſhot with it ſo as to hit a nail twice out of thrice upon the head, and drive it through a board; I have uſed it when

a gentleman has desired to hold a small thing between his finger and thumb, while I have shot at it.

Q. Perhaps it is not necessary to go too minutely into these discussions, unless it is thought necessary on the other side—do you apprehend that the tube of an air gun may be so constructed as to discharge an arrow, instead of the ordinary discharge of a bullet?

A. I am sure it may.

Q. Cast your eye upon this paper, and tell me whether you think an arrow constructed according to that drawing might be discharged, and whether it would not be a dangerous instrument to be discharged by the explosion of an air gun?

A. Here is a drawing of two arrows, one of which is barbed, another that is not barbed.

Q. Supposing the barbed arrow so constructed, as that the barbed parts of it might be made to collapse, and so to enter in that state the opposing body; and supposing something consisting of two barbs in the shape of an arrow, to be put in a collapsed state into an air gun and protruded by the force of the air, could it be forced out in its collapsed state?

A. It might; but as soon as it was out it would regain its native position.

Q. You see no difficulty in putting a barbed instrument into an air gun to be exploded?

A. It depends upon the strength of the springs of the barb, if the springs are weak it might be done—but those springs could not act without a joint, in the part near the end of the place where this barb is, they must act upon a joint.

Q. We suppose it has every thing necessary to constitute a complete instrument?

A. It would undoubtedly expand again when it came out into the air.

Q. Have you any doubt that an instrument so constructed, projected by the force of the air gun, would occasion death?

A. I should have no doubt; I think it would be a dreadful instrument, if it was projected from an air gun.

Lord Chief Juſtice Eyre. Can you give us any information concerning theſe two particular pieces of wood, that are ſuppoſed to be models of ſomething?

A. This might be made for ſuch an inſtrument as this; it might be made into a tube for a condenſer, ſuppoſing this part to be left for the bore, to make a tube inſide; I ſhould think it too large—I ſhould not think it well contrived.

Mr. Garrow. Your knowledge of the ſcience would induce you to make the bore ſmaller than that propoſes it to be?

A. Yes.

Lord Chief Juſtice Eyre. Is there any appearance of a bore in that model?

A. The two ends deſcribe the bore.

Mr. Garrow. And the larger part the external ſpace?

A. It appears ſo.

Q. Suppoſing I had wanted a cylinder of the external dimenſions of the largeſt of theſe pieces of wood, and a bore of the ſize of the other; would not that drawing have enabled you to make it of the required thickneſs?

A. I ſhould have ſome idea of it from this, but I ſhould have aſked a queſtion or two as well as ſeeing this—this could never have been deſigned for the internal part of an air-gun, formed into a walking ſtick; if this was deſigned for a piſton to condenſe the air, it muſt have been unconnected with the gun, and only have ſcrewed on to it for the purpoſe of condenſing it; I ſhould have made my air cane or air gun, if I had made it with the piſton entirely in the hand, that nobody ſhould have ſeen it; this if it was made, muſt have been made to have been put on occaſionally, not to have been in the hand.

Q. Suppoſing ſuch a piſton to be applied to a braſs tube, would it not become an inſtrument of death with ſuch a barbed arrow as we have talked about?

A. This wood might be a model for making a piſton to contain air enough in a braſs tube to have expelled three or four times, without re-charging, ſuch an inſtrument of death; I could have made one from that model, if I had been informed they wanted

wanted it made in that way, I could have so done it; but this is not well done.

Q. Look at this paper, does that top appear to be a description of such a wooden instrument as this, though not a very accurate one?

A. Certainly, it does something like that; but it is evident that the person who drew this was not a master of drawing?

Lord Chief Justice Eyre. Does it describe sufficiently these two pieces?

A. I have seen but one.

Mr. Garrow. Look at the other part, and see whether that drawing describes this?

A. I think I should not have an idea of this form from this, it is drawn so very badly.

Q. Looking at the two together do they appear, though badly described, to have such a correspondence that one may be made from the other, with some verbal assistance by way of directions?

A. With verbal assistance it might, but I do not think it could be made without—I cannot say that there is any thing in it that is sufficiently like it, for me to suppose it was made from this drawing, unless the person had some verbal directions besides —the top part is well enough described the piston.

Q. I observe the drawing you have in your hand has got additions to it; there are rather round parts which it is necessary to be made acquainted with the drawing to describe; but looking at that drawing, do you take that to be a drawing of the thing that you hold in your right hand? *(the model)*

A. If I had seen them together upon a table, I should not have supposed that this had been a drawing of this; and it could not have been a drawing of it without verbal explanations.

Lord Chief Justice Eyre. The question is whether with verbal directions the two pieces of wood you have in your hand might have been formed from the hint given from that drawing?

A. Very indifferent drawings will do with verbal directions.

Lord Chief Justice Eyre. Do you suppose that with verbal directions

directions theſe two pieces of wood might have been formed from the hint given by that drawing?

A. I have no doubt of it.

Mr. Harvey Walklate Mortimer,

Croſs-examined by *Mr. Adam.*

Q. If this braſs tube had been put into your hands without any thing being ſaid about it, ſhould you have known for what uſe it was made?

A. It is impoſſible that I ſhould have known what it was for, without any thing being ſaid about it.

Q. You have ſaid you do not make air guns in this form?

A. We make them in a ſnugger and neater form.

Q. Are you in the common practice of making air guns?

A. Yes.

Q. And you make them like a common walking ſtick?

A. Yes; ſometimes I make them in the ſhape of a common gun, ſometimes in the ſhape of a piſtol; I have piſtols now in the ſhop.

Q. Do not you make them in the form of a walking ſtick?

A. Yes.

Q. And then you make them portable?

A. Yes.

Q. Have not you made them frequently in that form for ſale?

A. Yes; I ſold one which his Majeſty ſent as a preſent to the Dey of Algiers, a little while ago.

Q. So that the piſton for the condenſed air ſhould lie within the cane?

A. Yes; I can make them either within it or without it; I have made many guns with the piſton within, and others without it.

Q. You ſaid that a barbed arrow might be put into a gun; but would not the conſequence of firing it out of the gun, be that the moment the reſiſtance of the ſides of the cylinder of the gun are withdrawn by the arrow getting beyond into the open air it would open?

A. I have ſome doubt about that; a barbed arrow may be put

into a gun with a great deal of eaſe, but the end before you get to the point muſt be ſolid; at the end of that bard there are two joints, each of which will bend, but being bent only a little it will open—it will keep cloſed as it flies till it ſtrikes a body, and when it enters the body it will immediately open at the two parts where there are the joints, and it will let out whatever is in it; but in paſſing through the air, be it ever ſo far, it is not in the leaſt injured, and if it were ever ſo full it could not be diſcharged of its internal matter till it ſtruck the body—now that arrow could be eaſily made, and if the bottom part were made hollow you might put a little condenſed air, ſo that whenever it ſtrikes againſt any body it ſhould force out what was in it, by the preſſure of the air which was behind it—if it was ſo made it muſt be feathered, as that appears to be upon the drawing, but it muſt be feathered more than that, ſo as to preſs equally totally round the cylinder, and the preſſure of the whole force of the air would be entirely upon it—I could with a tube which I take in my hand blow without any condenſed air whatever, I could with my mouth blow an arrow of that ſort, if within ſix or eight yards, with ſufficient force to do a mortal injury to any man living—my men are frequently trying little experiments.

Lord Chief Juſtice Eyre. Be content juſt to anſwer the queſtions; what is the preciſe queſtion you aſked him?

Mr. Adam. He has anſwered to all that I wiſh to aſk him—the object of my queſtion was merely to know whether the arrow collapſed immediately as it comes out of the barrel, he ſays it does not.

Mr. Garrow. Did you ever ſell any of theſe walking ſticks?

A. I did formerly to any that would purchaſe them; I have not for ſome years, I thought them dangerous.

Lord Chief Juſtice Eyre. Looking at theſe two pieces of wood and at this paper, can you from their conſtruction be able to inform the Jury for what uſe theſe two pieces of wood were intended?

A. I verily believe for the purpoſe of an air gun.

Lord Chief Juſtice Eyre. That is what you believe?

A. I do verily believe ſo—the uſe of them I cannot tell.

Lord

Lord Chief Juſtice Eyre. An air-gun will, I ſuppoſe, carry an arrow, or ſhot, or a ball?

A. I can ſhoot a ball at ſixty yards very ſtrong.

Lord Chief Juſtice Eyre. But your judgment is, that theſe two pieces of wood appear to be the models of that which is to make part of an air-gun?

A. Taking the tube and the models together, I am ſatisfied they were for an air-gun.

Lord Chief Juſtice Eyre. What tube do you mean?

A. This long braſs tube.

Lord Chief Juſtice Eyre. Suppoſing the long braſs tube was entirely out of the caſe, what do you ſay then?

A. It would be ſatisfactory to me that there was ſomething of that kind intended to be made, but not ſo ſatisfactory as with the tube; it is an additional evidence in my mind.

Robert Ward, Eſq. (ſworn)

Examined by Mr. *Attorney General.*

Q. You are a barriſter at law, I believe?

A. Yes.

Q. I have occaſion to aſk you about Mr. Upton, of Bell-yard; it will not be proper to ſtate any converſation, I will only aſk you as to a fact.—Do you remember ſeeing Upton in Auguſt or September, 1794?

A. It was the 12th of September, 1794.

Q. Have you ſeen theſe two papers before?

A. I am clear, as to this paper with the drawing of the barbed arrow—I ſaw this in the poſſeſſion of Upton, on the 12th of September, 1794. I am not quite ſo clear as to the other.

Q. It was at Upton's houſe, I believe?

A. It was.

Q. Did you happen to ſee this in Upton's poſſeſſion?

A. I ſaw theſe models, but not the tube.

Robert

Robert Ward, Esq.

Croſs-examined by *Mr. Gurney.*

Q. At what time did you communicate this fact to any of his Majeſty's miniſters?

A. I think it was on the Friday, when I ſaw this in the poſſeſſion of Upton, and, I think, on the Saturday I waited on Mr. Pitt, but I did not ſee Mr. Pitt till the Wedneſday following.

Mr. Attorney General. Did you communicate it to any magiſtrate?

A. No; I did not ſee any body upon the ſubject, till I ſaw Mr. Pitt.

Mr. Attorney General. We have cloſed the caſe for the proſecution.

Mr. Adam. I beg to aſk a queſtion or two of Mr. Palmer.

Mr. Peregrine Palmer, (called again)

Examined by *Mr. Adam.*

Q. Do you know any thing of Mr. Croſsfield's pecuniary circumſtances?

A. Yes, I do.

Q. In what circumſtances was he at the time he left London?

A. His whole property was aſſigned over for the benefit of his creditors.

Q. Was he in debt do you know?

A. Yes, he was.

Mr. Adam. I think it right to inform your Lordſhip, that I am afraid it is abſolutely impoſſible for me to bring the caſe I have to lay before the Court, within ſuch a compaſs as to give me the leaſt hope of producing the evidence, in favour of the priſoner, while the Jury are able to give that attention to it which it is of importance to him they ſhould give; but I am ready to do exactly what your Lordſhip pleaſes.

Lord Chief Juſtice Eyre. I am afraid we ſhall be under the neceſſity of going on, if there will be any proſpect of finiſhing to-morrow.

to-morrow.—There is, I believe, no proviſion made for the Jury.

Mr. Adam. The ſame thing happened on the trial of Mr. Stone, and the Court adjourned.

Lord Chief Juſtice Eyre. As far as concerns the capacity, I ſhould have to do the Country and the priſoner juſtice, I ſhould be glad of the accommodation of an adjournment.

Mr. Gurney. The Jury were accommodated with beds at the London Coffee-houſe, on the late trials.

Mr. Adam. I do not ſpeak with a view to any perſonal accommodation to myſelf; but becauſe I am aware that the caſe, which I have to lay before the Court, muſt neceſſarily take up ſo much time, as will make it impoſſible almoſt for human ſtrength to go through it, without an adjournment.

Lord Chief Juſtice Eyre. I ſhould be ſorry, if by forcing you on, we ſhould put you under any incapacity to do your duty.—I find the Sheriffs have provided lodgings for the Jury.—What do the Jury ſay about it?

Several of the Jury ſaid, they felt themſelves ſo much fatigued that they were perſuaded they ſhould not be able to give proper attention to the caſe of the priſoner, unleſs the Court adjourned till the morning.

It being now paſt eleven o'clock at night, four Officers were ſworn, in the uſual form, to attend the Jury, who ſlept at the London Coffee-houſe; and the Court adjourned to the next morning eight o'clock.

THURSDAY

THURSDAY, MAY 12th, 1796.

The Court being opened, Robert Thomas Crosfield was set to the bar.

MR. ADAM.

May it please your Lordship,

Gentlemen of the Jury,

It is now come to that stage of this cause, when I am to address you upon the part of the prisoner. Gentlemen, I cannot help congratulating you, and I cannot help congratulating myself, that the measure of adjournment from the heat of the Court of last night, to the quietness and composure of this morning has taken place. I am sure, Gentlemen, it is for the benefit of us all, that we come here with fresh recollections, that we come here with our minds not impaired by a long and a fatiguing attendance, in order to discharge that most important, that most weighty, and to me, that most awful duty which is now to be discharged.

Gentlemen, I may fairly say, because I can say it with truth, and with energy equal to its truth, I never before stood in such a presence.

Gentlemen, it never happened to me before, in the course of my professional life, to be engaged as the person who was to lead in conducting the defence of a prisoner in a trial for his life. Far less has it ever happened to me to be charged with the life of a prisoner, tried for the crime for which the prisoner at the bar now stands indicted. Gentlemen, when I mention these circumstance, I can assure you, and I can assure the learned and the respectable Judges, who preside upon this occasion, that I make this declaration, not with a view of consuming your time by any vain or any particular applications to myself; I do it, because I think upon this occasion, it will suggest that, which, if it were necessary to inculcate, I am sure I have much need of, namely, that the learned and respectable persons who preside here, will consider themselves as Counsel for the prisoner. I know it is their disposition, I know it is the constant and general tenor of their practice; and I am sure that I stand in need, and my client, trusting his cause in my hands, stands in need of that aid.

Gentlemen,

Gentlemen, I truſt too, if any thing were wanting to excite your attention, to awaken your feelings, or to call upon you for a patient hearing of this caſe, my inſufficiency will excite thoſe exertions in you. And coming into this Court with the determination (impreſſed upon all your minds) impartially, patiently, and with that integrity which is your "true portion and "proper virtue," to conſider this cauſe; I know that all theſe qualities will be rouſed by the particular circumſtance in which I have deſcribed myſelf to ſtand.

Gentlemen, I can aſſure you, that from the moment I left the Court, laſt night, to the moment I am now addreſſing you (I might almoſt ſay even during the few hours of refreſhment by ſleep, which I had an opportunity of taking) that my mind has been conſtantly employed in this weighty, in this important matter. I have endeavoured to uſe that time to the beſt advantage, for the purpoſe of defending the priſoner at the bar; and for arranging the matters which I have to diſcuſs, in the beſt order that I am capable of.

Gentlemen, before I proceed to ſtate the obſervations that I have to make, either upon the nature of the caſe, or upon the evidence as it has been laid before you, I will take the liberty of ſhortly preſenting to you, what I conſider to be the queſtion now to be tried.

Gentlemen, the priſoner at the bar is, as Mr. Attorney General ſtated, indicted for High Treaſon. The particular ſpecies of High Treaſon, for which he is indicted, is that of compaſſing and imagining the death of the King. By the law of the land, as was ſtated to you, by Mr. Attorney General, the will in that caſe goes for the fact. That is to ſay, the intention of killing the King is as much a crime as if the fact were actually committed. And I agree, perfectly, with my learned friend, that it is impoſſible to conceive a wiſer inſtitution. Now I enlarge upon his ſtatement: for if that inſtitution is wiſe for the purpoſes of Monarchical Government in general; it is particularly wiſe as applied to the Government of this Country. In this mixed Monarchy where the nature of our Government gives a free ſcope to a variety of political opinions, and modes of

thinking; it becomes more particularly neceſſary to protect the perſon, who unites and fortifies the general ſyſtem and frame of our Conſtitution. At the ſame time, however, that the Legiſlature has been cautious, and has peculiarly interfered to guard the ſacred life, on which, I aſſert (with the ſame energy as Mr. Attorney General) the well being of the ſtate ſo much, ſo eminently depends; it has been moſt anxious to fence and guard the critical ſituation of the priſoner. To take care that he ſhall have a fair trial; to lay down certain rules for the manner of aſſembling you in the place where you are now ſeated; to regulate the principles which are to guide you in conſidering the evidence. Thus while the Law and Conſtitution wiſely protect the Crown, by rendering the will equal to the deed, it is equally cautious that as that is a moſt difficult ſituation, in which to place a ſubject upon all occaſions, and as that difficult ſituation is peculiarly applicable to the caſe of Treaſon; the ſame Law and Conſtitution have provided thoſe ſafeguards for the ſubject to which I have alluded.

Gentlemen, one of thoſe ſafeguards of the ſubject is, that there ſhall be ſtated upon the face of the indictment, thoſe *overt acts* or *open deeds*, which are ſuppoſed to have the tendency to accompliſh the end in queſtion. Upon the preſent occaſion you have had it ſtated to you (and I will, therefore, only recite it again ſhortly to you)—You have had it ſtated, that this indictment does ſtate ſuch overt acts: that it ſtates, in the firſt place, a conſpiracy between the priſoner, and three other perſons, who do not now ſtand upon their trial, and perſons to the Jurors unknown, to prepare a certain inſtrument, to be loaded with a certain arrow, to be ſent forth from thence, for the purpoſe of taking away the life of the King. It likewiſe ſtates the ſame overt act, but ſtates it without laying it to be done in conſpiracy with others.—It likewiſe ſtates overt acts of conſultation, where they conſulted and conferred together, for the purpoſe of taking away the life of the King. Theſe are, generally ſpeaking, the nature of the overt acts ſtated in the indictment. You will obſerve throughout, Gentlemen, that there are two diſtinct propoſitions in this caſe—One propoſition is, that there was an inſtrument

ſtrument prepared, or ordered to be prepared; another is, the intent or the purpoſe to which that inſtrument was meant to be applied. Theſe are in their nature diſtinct propoſitions. They are diſtinct propoſitions upon the face of the indictment; and they are diſtinct propoſitions in the proof; as I ſhall have occaſion afterwards to ſhew you when I come to ſpeak to that part of the evidence.

Gentlemen, you have heard upon this occaſion, that there have been various rules laid down by lawyers, relative to the manner in which evidence in a queſtion of this nature is to be conſidered by a Jury. To this I aſſent; but there is no very difficult queſtion of law upon the application of the rules of evidence in this caſe; ſo that I ſhall have the happineſs, I truſt, of making myſelf diſtinctly underſtood to you upon the preſent occaſion. Gentlemen, my learned friend, the Attorney General, cited his doctrines of the law of England, with reſpect to Treaſon, from an authority to whom he paid the higheſt tribute of applauſe. To that authority no tribute of praiſe is too great. I allude to Mr. Juſtice Foſter, whoſe name he truly ſaid would live as long as the Conſtitution of England endured.

Gentlemen, I ſhall have occaſion, in the ſequel of what I ſhall be under the neceſſity of addreſſing to you, to have recourſe to the doctrines, and to the learning of that eminent perſon; but I flatter myſelf, that neither of the learned Judges upon the Bench, nor you whom I have now the honour more directly to addreſs, will think that I deviate in the ſmalleſt degree from that propriety which is due to your ſituation, from that rule of conduct which relates to mine, from that duty which I owe, above all, to the priſoner at the bar, if I call your attention back to a much more early period of the Engliſh hiſtory, and of the Engliſh law. If I endeavour to adduce my doctrines from perſons who wrote, comparatively ſpeaking, in times of antiquity.—That I may ſhew thoſe doctrines to have been continued from that early period down to the preſent moment, to include the time in which Mr. Juſtice Foſter wrote, and conſequently to have been invariably the ſame.

Gentlemen, the act of parliament ſays, (for this is an indict-

ment upon the ſtatute of 25th Edward III.) "When a man "doth compaſs or imagine the death of our Lord the King, and "thereof be provably attainted of open deed, by the people of "his condition, he ſhall be adjudged guilty of Treaſon." This is, ſhortly, the part of the ſtatute which relates to the crime in queſtion, which I ſtate to you diſtinctly, and ſeparately from the other Treaſons, which are enacted by that ſtatute, in order that you may diſtinctly and clearly underſtand, that the only queſtion for you to try is, whether the perſon at the bar did, upon the evidence, compaſs and imagine the death of the King: —and whether he be thereof *provably* attainted of open deed. Now, Gentlemen, this word *provably* has been upon all occaſions, a word extremely relied upon, in the conſtruction of this act of parliament. The meaning of that word has received a moſt ſolemn, a moſt deliberate, and a moſt enlightened conſideration from a perſon greatly eminent in the law of this Country, from my Lord Chief Juſtice Coke; who, in his Commentary upon this ſtatute, ſays—"By provable is meant that it is "upon direct and manifeſt proof, not upon conjecture or pre-"ſumptions, or inferences, or *ſtrains of wit*, but upon good "and ſufficient proof; and herein the adverb provably hath a "great force, and ſignifieth a direct plain proof, which word "the parliament did uſe, for that the offence was ſo heinous, "and ſo heavily, and ſeverely puniſhed as none other the like; "and, therefore, the offender muſt provably be attainted, which "words are as forcible as upon manifeſt and direct proof; note, "the word is not *probably*, for then common argument would "do, but the word is provably be attainted." Such is the conſtruction, ſuch is the opinion laid down by Sir Edward Coke, conſidering this ſtatute, deliberately in his cloſet. A perſon deeply acquainted with the principles of the law of England. You ſee here that he makes a great deal to depend upon the word provably: that he diſtinguiſhes moſt materially between the word *provably*, and the word *probably*; and he ſays, that on account of the ſeverity of the puniſhment, and for the protection of the priſoner, that the legiſlature meant that he muſt be attainted *provably*, that is by manifeſt and direct proof.

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This commentary of this profound lawyer is now by common conſent (and will be ſo ſtated to you from the Court) allowed to be the undoubted law of England—to be incorporated as completely in the Conſtitution and the law of the Country as any other maxim, any other principle, any other declaration of the common law whatever. Gentlemen, this, which was laid down by my Lord Chief Juſtice Coke in his cloſet—this, which has become (as I have had the honor of ſtating to you) the law of the Country—this, which is uniformly reſted upon by Judges and by Juries, in all queſtions of Treaſons, as the found rule of conſtruction and deciſion, was carried into effect, was realized, and acted upon, by another great luminary of the law, in a great and eminent proſecution, in the reign of James I.—not a proſecution for Treaſon, indeed, but a proſecution in which Sir Francis Bacon, to whom I allude, brings the doctrine directly home to the queſtion of Treaſon: ſo that the ſame principle which is laid down by my Lord Coke privately in his cloſet, is adopted and acted upon in the public Court by my Lord Bacon, when he was Attorney General; at a time that he was addreſſing a Jury impannelled, as you are now, to try a priſoner indicted by the Crown.

My Lord Bacon, in the trial of Lord Somerſet, ſays, "The "King hath given us command that we ſhould not expatiate "or make invective, but materially purſue the evidence as it "conduceth to the point in queſtion; a matter that, though we "are glad of ſo good a warrant, yet we ſhould have done our-"ſelves; for far be it from us, by *any ſtrains of wit or art*, to "ſeek to play at prizes, or to blazon our names in blood. We "ſhall carry the lanthorn of juſtice (which is the evidence) before "your eyes upright. I will ſpeak ſomewhat of the greatneſs "of the offence, not to weigh down the priſoner, but ſhew "that a great offence needs a good proof, for the offence next "unto High Treaſon is the greateſt."

In that caſe, my Lord Bacon was ſpeaking in the trial of a perſon for murder, but you ſee he brings the whole doctrine home to the queſtion of Treaſon: he obſerves, that the King had given it in command not to expatiate, or make invectives.

Gentlemen, the rules of modern times, and the practice of the Conſtitution now, admit of no ſuch alluſions; I am ſure, however, if they had been permitted, the monarch under whoſe government we live—who conſiders his own life as ſacred only for the benefit that it beſtows upon the Society which he governs, would have given ſuch a command, if, according to the uſage of theſe times, it had been regular ſo to do. I am ſure, at the ſame time, that I do no more than juſtice to my learned friend when I ſay, that ſuch a command to him would have been unneceſſary, for throughout all the opportunities that I have had of ſeeing his practice, in the eminent and difficult ſituation in which he ſtands, he has followed forth peculiarly, he has copied candidly and manfully, the doctrine laid down by my Lord Bacon.

Gentlemen, my Lord Bacon brings his doctrine home to Treaſon; he lays it down in a caſe of murder, but he ſays expreſsly that is the higheſt crime except Treaſon; he therefore does moſt undoubtedly bring the whole doctrine of my Lord Coke, with regard to the meaning of the word provably, home to that particular point of Treaſon; that is to ſay, he lays it down as a doctrine, that in a queſtion where there is a priſoner at the bar tried for his life, whether it be a Treaſon, or whether it be murder, the evidence is not only to be carried upright, but he uſes the very words of my Lord Coke, and ſays, that it is not meant by him to uſe ſtrains of wit, or by art to ſeek to play prizes.

Gentlemen, having ſtated this to you, as the doctrine upon which this caſe muſt be determined—as the rule by which this evidence muſt be judged, I earneſtly requeſt of you to treaſure it in your minds, for the purpoſe of applying it in the ſequel of this caſe, when I ſhall have the honour of ſtating the evidence particularly to you; in the mean time, permit me to lay before you what the nature of this accuſation is, tracing it from its ſource. Gentlemen, my learned friend, the Attorney General, has brought into your notice a perſon of the name of Upton, whom he has not been able to bring here to-day; about which I ſhall be under the neceſſity of ſaying a few words by-and-by.

The indictment itself, too, brings Upton to your notice; and you have heard from the very best of all authority, (namely, from the authority of Mr. Attorney General himself,) that if Upton had been examined here, that he would have appeared to have been a person concerned in this crime, and discovering it to the Government of the Country. Such is the situation in which this person is represented. Gentlemen, I shall have occasion in the sequel most lamentably indeed to regret that that person has not been in a situation to be brought here. Upon the present occasion, I bring him to your notice merely for the purpose of calling your attention to the nature of the probabilities in which this case is founded; and I think I shall be able to demonstrate to you, on the one hand, that the probabilities are all against the existence of such a conspiracy as is here stated, and that, on the other hand, there is no proof *provably given* sufficient to establish a contrary conclusion; nor any to satisfy your minds that, in a case of blood, in a crime such as this indictment sets forth, there is any ground or foundation for you to rest a verdict of Guilty upon; but that you will send the prisoner forth among his fellow-subjects, I trust, to pass the rest of his life in a conduct which will make it perfectly impossible even to impute to him any thing like that with which he now stands charged.

Gentlemen, I must call to your attention, upon this occasion, not only the particular character of Upton, but I must likewise state to you what is already proved in part by the cross-examination of the witnesses for the prosecution, by farther proof, direct and manifest, coming home to the very point, and to the very issue in question. I shall be enabled to lay before you evidence of the relative situation of animosity and hatred in which Upton stood with the persons with whom he is supposed to have conspired; of whose actions he became, according to the case made by the Crown, first the accomplice, and afterwards the spy: I shall be able to prove, that Upton was in a situation of hostile discussion with Higgins, of enmity with Le Maitre, and of difference with Smith; that there was not any thing like an intimacy, of acquaintance, or of confidence between him and

the prisoner at the bar; for you will recollect that you have it proved by incontestible testimony, that the prisoner had been but for a very short time indeed acquainted with Upton.

Now, if I can establish to you that he lived in direct enmity with Le Maitre, that his enmity had gone to such an extent that he had sent him a challenge to fight him, because Le Maitre had accused him of crimes of a deep die, and that Le Maitre had not given him that satisfaction which perhaps it might be contended (though I think it hardly could be in a Court of justice, whatever the laws of honour may falsely lay down) lays all revenge to rest. If I prove to you, what has not been denied by some of the witnesses for the prosecution, his enmity to Higgins, and that in fact an enquiry was commenced with great form, and carried on with great diligence, that had for its object the discovery of Upton's crimes, and his expulsion from the Society, where, if he was not an active member, at least he was a spy, who might expect to receive emolument. I ask whether the probability is not strong against the existence of such a conspiracy?—whether you can suppose conspirators not only not intimately acquainted, but hardly acquainted at all?—whether you can suppose conspirators living in a state of direct enmity with each other?—whether you can suppose the confidence of conspiracy to exist where enquiry is carrying on which must lead to the exposure, expulsion, and final destruction of the very man who was the discoverer and the accomplice? I ask you whether it is possible that such a proposition can, consistently with the common rules of human action, gain belief? I prove these things incontestibly, and I pledge myself to prove them: I then call upon you for this necessary conclusion, that the grand foundation, the principal ground-work of this great crime, the probability of its existence, is destroyed, annihilated, abolished, and done away: that consequently, when the foundation is gone, the superstructure must fall; and all that my learned friend has built upon it, and all that he wishes to have you infer from the evidence which he has given, and every circumstance which he wishes you to note as inferring guilt upon the unfortunate person at the bar, turns directly the other way. Then it is I call upon you to apply the

doctrine

doctrine which I have shewn to be the law of Lord Coke and Lord Bacon—Here, I say, you must have manifest proof—Here you must not decide according to *flights of wit*—Here you must see that the lanthorn of justice (the evidence) is carried clearly before your eyes. I know that I am addressing myself to twelve persons who have feelings—who have integrity—who have intelligence—who have discernment to possess every quality that can belong to the sacred and important function in which they are engaged; I am confident, therefore, that if I establish in proof what I here state myself able to prove, I shall do away in their minds all idea of the existence of this conspiracy, and consequently every thing that is founded and built upon this conspiracy.

Gentlemen, this is not all, this relates only to the improbability of such a conspiracy having been contrived by these jarring, hostile, unacquainted conspirators; I now request your attention to the probability of such a contrivance, coming from Upton. That man, who has not appeared before you—What was his situation? His conduct was enquired into for crimes of the deepest dye; his enmity will be proved by messages of the most hostile nature; the whole tenor of his life will hold forth a man who, if he had appeared in that witness-box, you would have shrunk back from with horror. These, then, are the considerations—What was the situation of this man?—what was the particular time in which he spoke?—what is the peculiar turn (as the history of all ages have proved it) of men of that description in such times and in such situation? The man, such as I have described him, had no means of refuging himself from obloquy but by the fabrication of a plot. He determined, therefore, to turn what he had invented; God Almighty knows for what purpose he might have invented it; he was capable of using it for the vilest purposes, and was equally capable of turning it to any other purpose that might suit his interest or gratify his revenge at the moment. Such is the situation in which Upton stands; and therefore I establish not only the improbability of the conspiracy existing, on account of the state of the parties;

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on one hand, but I eſtabliſh a manifeſt, a clear, and diſtinct probability of Upton contriving it on the other.

Gentlemen, what was the ſtate of the times? Is it poſſible for any men who love their Country to forget the alarm which ſpread throughout the nation, which ſeemed at once to take poſſeſſion of all ranks and deſcriptions of men? It was in the midſt of that alarm that this plot was contrived; nay, not only ſo, but it was contrived at a moſt particular æra of that alarm. You will recollect, (I am ſure my Lord will recollect) that there was a time when convictions had taken place in a northern part of this Country of perſons tried for High Treaſon; they were tried upon the ground that there had been a conſpiracy againſt the Government of the Country, to deſtroy this Country, and, by inference, aiming at the life of the Sovereign: theſe perſons, Gentlemen, were convicted. There were trials in this Country, where perſons were tried for the ſame crime, and thoſe perſons were acquitted. Gentlemen, I bring nothing into a Court of Juſtice but the duties of an advocate; I make no obſervation upon the convictions in one Country, nor upon the acquittals in the other; I ſtate the fact for this material purpoſe. In the intervening time, when the alarm had taken poſſeſſion of mens minds, which had been raiſed to a conſiderable height by the proof of the exiſtence of that in which the alarm was founded, owing to the convictions in Scotland, before the Grand Jury were impannelled in England, but not before the commiſſion was iſſued, to try the Treaſons—before the acquittals, which tended to relieve mens minds in this Country from the ground and foundation of that alarm, juſt in that intermediate time, at that particular moment, was this plot brought forward by Upton, was this diſcovery made; and till that time it never had an exiſtence.

Such was the peculiar time at which this diſcovery was made: but mark the coincidence of circumſtances. That very time which will be proved to you to have been the time of accuſation, will be proved to you to have been near immediately poſterior to the time of the challenge—it will be proved to you to have been

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the time when Upton was roufed, not only for his perfonal defence and fafety, but from every other motive, to make the accufation. Why then I have got, upon the prefent occafion, three things which eftablifh, according to all human probability, and we are to judge of human actions according to the nature of human kind—I have got three grounds, all of which evince that there was the ftrongeft probability that this man invented this plot for his own purpofes: I have his perfonal fafety—I have his revenge—I have the particular circumftances of the times, exciting him to it, at once encouraging him and protecting him; and then I have, in addition to that, the hope of reward. Now I defire that you will examine all thefe different motives, I defire that you will carry them in your minds, I anxioufly entreat you to confider what the nature of them is, and I am fure you will find, that although they are different motives, that they are not only concurring motives, but that they are motives which can exift in the fame breaft at the fame time. There is nothing inconfiftent in a perfon being urged at once by perfonal fafety, by the love of revenge, and by the hope of reward, in order to bring to punifhment perfons who he knew were perfectly and completely innocent of any thing that tended to turn them to the malicious—to the wicked purpofe to which the evidence given for the profecution (which I am by-and-by to examine into) attempts to turn it. This is not all. What was the temper of mind at that period? How well was the fociety in which we live calculated at that time to encourage a mifcreant to bring forward into action fuch a contrivance?

In addreffing myfelf to you, I am not fpeaking to perfons who are ignorant of the hiftory of their Country, and of the hiftory of mankind; I am fpeaking to intelligent men, capable of judging of this cafe in all its views, and under all its circumftances. And I believe the hiftory of the world does not furnifh an inftance of a period of ftrong alarm and apprehenfion, laying hold of the public mind, without begetting perfons of the character of Upton, and without thofe perfons taking advantage of the times, in order to anfwer their own wicked purpofes. Gentlemen, I will not lead you out of the hiftory of your own Country;

try; but I am ſure I ſay nothing that has not a direct analogy and bearing upon this cauſe, when I call upon you to reflect upon the hiſtory of the laſt century—when I call upon you to attend to the ſentiments of a moſt eloquent and philoſophic hiſtorian, whoſe ideas I will quote in the very words which he uſes when this Country was alarmed in 1670 at the idea of a popiſh plot. There ſprung up at that time, and during that alarm, perſons preciſely anſwering to the deſcription of this abandoned informer. Inſtead of giving my own opinions and ſentiments upon the ſubject, I have recourſe to that profound obſerver on human nature Mr. Hume. His deſcription of that awful period I am ſure you will all realize in your own minds. I am ſure you cannot have been without apprehenſions of the ſame kind, and I am not afraid of bringing thoſe apprehenſions back to your minds, becauſe I know the honeſty of your natures will not permit you to let thoſe apprehenſions operate to the priſoner's prejudice, unleſs you ſee it clear and manifeſt that theſe probabilities are provably eſtabliſhed to have any foundation in reality. The hiſtorian ſays of that time, talking of this Country at the period of the Popiſh Plot—"They thought "their enemies were in their boſom, and had actually got poſ- "ſeſſion of their Country. Each breath and rumour made the "people ſtart with anxiety. Like men affrighted and in the "dark, they took every figure for a ſpectre. The terror of "each man became a ſource of terror to another, and an uni- "verſal panic being diffuſed, *reaſon and common ſenſe, and com-* "*mon humanity, loſt all influence over them.*"

Gentlemen, ſuch is the ſituation of the public mind upon all ſimilar occaſions. The firſt part of that deſcription paints that which gave this abandoned man hopes of the ſucceſs of his meaſures. The latter part of it, I know, does not paint the character of the preſent times. Thank God! the judicial improvements of this Country ſince that period. The integrity of the Judges. The enlightened minds of Juries. The capacity of diſtinguiſhing between guilt and innocence. The openneſs to receive information. The abandoning all ideas of judging upon any facts or impreſſions, except thoſe ariſing in the ſingle cauſe in queſtion.

queſtion. The never coming into Court, but with an idea of the cauſe; nor going out of the Court to deliberate upon the verdict, but with an idea of the cauſe, and the cauſe only. The throwing behind all prejudices of every ſort, even the neareſt and the moſt forcible upon the human mind, form, happily form, the judicial character of the preſent times. Unfortunately it was not ſo, at the time of which the Hiſtorian ſpeaks. Juries were not ſo conſtituted, Courts of Juſtice were not ſo regulated. The annals of that time, certainly do not concord with the annals of the preſent period. This, thank God, is a bright æra for the hiſtory of Engliſh juriſprudence, and the judicial purity of Jurymen. Therefore, Gentlemen, though I quote to you, for the purpoſe of ſhewing you, that ſuch is the diſpoſition of mens minds. For the purpoſe of eſtabliſhing to you, that here is an inſtance, by which people would be induced to do what this wicked and abandoned man has done. I know, perfectly, that the concluding part is inapplicable to the preſent times, and that I am as ſafe in your hands, the priſoner, for whom I plead, is as ſafe in your hands, as if no ſimilar alarm had taken place at the period when this plot was contrived. I know, perfectly well, that you will baniſh all ſuch thoughts and ideas, and conſider the mere queſtion of guilty or not guilty, upon the probabilities on the one hand, and upon the proof on the other.

Gentlemen, I have now, I believe, gone through every circumſtance that relates to the original hiſtory of this caſe; to the ſituation and character of Upton; to the probability of there being no ſuch plot, becauſe the conſpirators were totally unacquainted with each other, and were at enmity with each other; to the probability of ſuch a plot, upon that account; and to the probability of their being ſuch a contrivance as that, with which I charge Upton as the contriver. It is now my duty to bring you to the particular evidence in the cauſe, and to call your attention to that evidence, in the different points of view in which it appears to me. And, Gentlemen, I hope to do ſo without being tedious; at the ſame time, as this is the important part of the cauſe, and as we are all engaged in the moſt ſolemn and important duty here, I do moſt anxiouſly entreat your patience; I am ſure

my Lord, and I am ſure you will pardon me, if in the diſcharge of a duty of this ſort, I ſhould rather be prolix, than run the riſk of leaving any thing unſaid, that may be for the benefit of the priſoner.

Gentlemen, the witneſſes upon this occaſion are of two ſorts, one ſet of witneſſes were brought to prove that an inſtrument (ſuch as is deſcribed in the Indictment) was prepared; another ſet of witneſſes were brought to prove that that inſtrument was meant to be uſed for the particular purpoſe laid in the indictment; you will obſerve, that theſe two ſets of witneſſes are of a very different nature, that they ſpeak to facts of a very different ſort; the one ſet of witneſſes, thoſe who prove the inſtrument, ſpeak to facts that paſſed before their eyes, but with regard to any uſe of the inſtrument, with regard to any colour given as to the purpoſe for which that inſtrument was prepared, or any application of that inſtrument, they ſpeak to no fact whatever, which tends in the ſmalleſt degree to eſtabliſh any thing like an application; the other witneſſes ſpeak merely to declarations, ſo that you will obſerve that upon this caſe, the evidence of fact only eſtabliſhes the making of a particular inſtrument, how far theſe facts bring it home to the priſoner, is a queſtion for you to try, and for me to diſcuſs; but the evidence of confeſſion therefore, or the evidence of declaration, is the evidence that tends to eſtabliſh the uſe of it.

Inſtead of examining the evidence in the order in which it was called, I will take the liberty of claſſing the witneſſes according to the different nature of their teſtimony, for the purpoſe of applying their evidence particularly to theſe two diſtinct modes of proof; becauſe different obſervations, different rules of probability, and different principles, apply to the one ſet of witneſſes, and the other owing to the nature of the ſubject ſo proved being different, and owing to the different mode by which the queſtion is proved. Gentlemen, the firſt witneſs who is called to you, is a perſon of the name of Dowding, that perſon you will recollect, did not ſpeak of any thing particularly; being prepared, he did not ſpeak at all to the priſoner at the bar, he only ſaid that three perſons came, and he ſaid that Upton was the principal ſpokeſman, and he particularly ſaid, when it was mentioned

tioned that it was a ſecret, Upton was the perſon who ſaid it was a ſecret; but you obſerve, that this perſon likewiſe ſtated a very material fact; he ſtated, that they haggled and talked about the price; now I would wiſh to call your attention coolly and deliberately to that fact; mark what the nature of the charge is, an important and a terrible charge, (if it is a true one) but on which muſt be bottomed, in a deſign which has ſome view and object, and have for its foundation ſomething more than four obſcure individuals meeting at a blind alehouſe, for the purpoſe of contriving this extraordinary plot; yet no evidence whatever is given to you, that any individuals upon this Indictment, upon this trial, that is that any individuals at all were concerned in it, but the priſoner and Upton; if the priſoner was concerned in it. Such is the nature of the ſubject which they were ſuppoſed to be talking to Dowding about; what does Dowding ſay, he ſays they haggled about the price, now I aſk you as judges of human nature, I aſk you as men capable of underſtanding the nature of man, and of weighing the import of human actions and of human conduct; whether it is a natural thing, that perſons carrying ſuch a plot as this, a plot going to ſuch an extent, a plot founded neceſſarily on ſuch a bottom, a plot connected with ſuch circumſtances, that they could be in a ſituation to think of the price of a miſerable metal tube, or that a few ſhillings one way, or a few ſhillings the other, could be at all an object; that circumſtance, and that fact, in my opinion, tend to eſtabliſh a ſtrong negative to the poſſibility of there being any ſuch thing exiſting in the minds of theſe people, as that which is attempted to be proved: but you obſerve that Dowding proves nothing done, and there is an end of my obſervation upon Dowding's evidence.

The next perſon produced is Bland, by his evidence you obſerve that nothing is proved to be done, only two were preſent at that converſation, Palmer remained behind, and Palmer accounted to you in his evidence why he remained behind, they were there for a very ſhort time, while Mr. Palmer remained behind at the corner of a ſtreet from a neceſſity of nature, when that was over he called at the houſe, and it appears that he was back again into the ſtreet from the houſe and overtook them; conſequently

consequently the conversation could not have lasted, according to the common course of nature, above a very few moments, but Palmer was not present there.

Now, Palmer is supposed to have been a person concerned in this plot, Palmer as well as Upton is supposed to have been cognizant of and acquainted with the particular object and design that the prisoner is charged with; is it not a most extraordinary thing—is it not contrary to all probabilities—is it not contrary to the course of nature, is it not contrary to the common conduct of man—that in a scheme of this kind, which was bottomed in an intent to take away the life of the King; (that terrible and dreadful act that one can hardly mention without shuddering) which must have been bottomed in an intention to overturn the state; must be done in connection with people and with powers, who were anxious that this scheme should be carried into execution. That the conspirators in that very scheme; that Mr. Palmer, a person ushered in by the Attorney General in his opening speech, and examined by Mr. Garrow as if he had been a witness of mine, and under cross-examination, and not a witness examined in chief. That of these conspirators, Palmer was so little attentive to the object of this conspiracy, that he staid behind for the reason given; that he should not know to what place they were bent next, and that when he did not find them in the house, it was only by seeing them in the street and overtaking them, that he found his way to the place where they next went.

I would wish you next to attend to the evidence of Cuthbert—Cuthbert, you observe, is a person who makes instruments, and particularly makes air instruments; he spoke to an air-pump; Cuthbert has nothing to do with the making of this instrument, he has nothing to do with this supposed conspiracy; Cuthbert does not give any proof whatever, of the fact of fabricating the machine, none whatever. But he states to you, that Upton being a watch-maker, and he having occasion to go to Upton for a particular purpose; namely, to pay him money, which was to be paid over to the wives and children of the persons who were confined in Newgate, for the Treasons that were formerly tried; he invited Upton to come to his house to see some of his machinery.

chinery. He ſays, that he ſoon diſcovered Upton to be a diſagreeable perſon; that when Upton called the ſecond time he took little notice of him, that he ſat upon his ſeat all the time; but he eſtabliſhes this important fact, that Upton and the perſon who came with him, appear to have been moſt completely ignorant of every thing with regard to the power of air; he proves, at the ſame time, that they did not go there with the intent of learning what the power of air was. He negatives that intent expreſsly; becauſe he eſtabliſhes this fact, that Upton went in conſequence of the particular invitation given him by him Cuthbert; ſuch is the nature of the evidence. Then I ſay we have now proved conſpirators contriving a machine of deſtruction, who were ignorant of the very principles of the machine which they were to uſe; we have conſpirators going to the ſhop of a mechanic, not with a view to learn the principle upon which this machine was to be conſtructed, but going upon the particular invitation of the perſon, as a matter of curioſity. Here is another obſervation which I am ſure you will make, when you come to conſider whether this caſe is proved provably or not; but Cuthbert's teſtimony is produced merely for the particular purpoſe of giving colour to their ſpeculation, and it proves their ignorance without proving that Croſsfield was one of the two; it does not go to the main, and the particular queſtion of the fabrication of the machine.

Gentlemen, as I am now upon the teſtimony of this witneſs, I will ſtate one other circumſtance; which is that, he ſaid, that he was attending at the Privy Council (and this he ſaid in anſwer to a queſtion of my learned friend on the other ſide the table who examined him) he ſaid, that there was one Dennis there, and that he did not know the priſoner, he had not the leaſt idea of him, he only knew that a perſon came in a particular ſituation, and could not tell whether the priſoner was in that particular ſituation or not; but he ſays, that Dennis was there at the Privy Council, when a perſon, whom Dennis called Croſsfield, walked through the ſame room, and then he ſaid with great anger, "there he goes," the witneſs aſked who, Dennis ſaid "Croſsfield, damn him, I "ſhould know him if it were his aſhes burnt."

I come now to the evidence of Joſeph Flint, there again there was a ſhort converſation, there was nothing done, and he ſpeaks poſitively to the lame man being the ſpokeſman, and does not identify the priſoner; nor does he ſtate that any thing was done of any ſort or kind.

Gentlemen, the next witneſs to whom I ſhall call your attention, is Mr. Palmer; my learned friend the Attorney General in opening, (and certainly the manner in which that witneſs was treated correſponded exactly with his opening) ſtated that he might be under the neceſſity of calling ſome witneſſes who ſtood in a particular ſituation and connection; and therefore it might be difficult to obtain the truth from them. There fell an obſervation in the examination of that witneſs, which I am ſure muſt have made an impreſſion upon your minds, from the height from which it fell, (Lord Chief Juſtice Eyre); it was this, that the Crown cannot diſcredit their own witneſſes in any thing, without loſing the benefit of that witneſs. What Palmer is, or any thing reſpecting him, I certainly have nothing to do with; I will ſtate what he proved, and ſuch obſervations as occur to me upon what he proved.

You will obſerve, in the firſt place, that Palmer aſcertained this fact without leaving any doubt upon the mind of any man who heard him, when he aſcertained it; he aſcertained that Mr. Croſsfield's perſonal acquaintance with Upton was of very ſhort duration, he could not even ſtate it to extend to a month. Therefore, you will recollect that that fact is one of thoſe which I call to my aid, in that part of the caſe, on which I have already addreſſed you; namely, the improbability of perſons ſtanding in that relative ſituation, conſpiring together for ſuch a purpoſe as this; for ſurely if any thing requires mutual confidence, it is a conſpiracy; and if any conſpiracy requires mutual confidence, it is the peculiar conſpiracy that is now the ſubject of inveſtigation. Palmer likewiſe eſtabliſhes another thing very material as to this deſign, and eſtabliſhes it without leaving a doubt; he eſtabliſhes that they dined that day in the neighbourhood of Temple Bar; that it was mere accident that led them to Upton, that he went there for the purpoſe of having a watch repaired, and that they walked

walked with Upton into the city; that in ſhort, this, ſo far from appearing to be any thing like a deſign, it was a mere accidental meeting. He then ſtates to you the various circumſtances with reſpect to their going from place to place, but he can give no particular account of what paſſed upon that occaſion; and as far as he goes, there certainly is not any colour to ſay that the thing which was prepared, was either ordered by the priſoner, that he had any hand in the ordering of it, that he was any thing more than an accidental companion of Upton, upon the occaſion; there is not the leaſt ground for a concluſion of a guilty deſign. With regard to the particular uſe and intention of the inſtrument, he ſays nothing that could lead to a concluſion that it was made with the view and the intention laid in the indictment; Mr. Palmer likewiſe proves to you the ſtate of Mr. Croſsfield's health; the ſtate of Mr. Croſsfield's circumſtances; and he likewiſe proves to you the ſituation in which Mr. Croſsfield was, before this conſpiracy is ſuppoſed to have taken place, before the diſcovery at leaſt; and the ſituation in which he was afterwards, to the time of his leaving England. With regard to thoſe laſt mentioned particulars of Palmer's evidence, I ſhall paſs them over at preſent, becauſe they apply more properly to another part of the caſe, which is moſt material for your conſideration; namely, the demeanour of the priſoner at the bar, throughout the whole of this tranſaction. I wiſh, however, before I go on, to call your attention particularly to dates, becauſe dates may be of great importance; I would wiſh you at preſent to obſerve, that Mr. Ward ſaid, he firſt went to Mr. Pitt upon Saturday the 12th of September, that he ſaw him on Wedneſday the 16th of September; it will be proved Le Maitre and Higgins were apprehended the 27th of September; that Smith was apprehended the 28th; and it will be proved that the advertiſement for a reward for the ſeizing of Mr. Croſsfield, was not till late in the month of February. Gentlemen, I deſire you at preſent to attend to theſe dates, becauſe in the ſequel of what I have to addreſs to you, I ſhall be under the neceſſity of making obſervations of ſome conſiderable importance with regard to them.

I now come to the evidence of Thomas Hill; you will recol-

lect he was the perſon employed to make the model in wood—you will obſerve, that throughout the whole of Hill's evidence Upton too is the perſon who orders; that Upton is the perſon who ſaid he ſhould be paid; that Upton's is the houſe to which he carried it; that Upton is the perſon to whom he applied for payment; and you will recollect, likewiſe, that he had no knowledge whatever of the priſoner. That the priſoner did not interfere in the buſineſs at all, except with reſpect to ſome directions in aiding Upton when he was giving the deſcription; but he did not ſeem to take any particular part in it. You will obſerve, likewiſe, (for I am ſure I ſtate the evidence fairly, and I ſtate it correctly) that all that he ſaid upon that occaſion was, that the ſtranger might do ſomething; but he ſpoke from a faint recollection.

If Hill has proved any thing, he has only proved the exiſtence of a thing, he has not proved the uſe of it, or the application of it—ſo little has he proved the uſe of it, that a ſcientific man, who wiſhed to ſhew us laſt night an oſtentatious ſample of his ſcientific knowledge unneceſſary for the occaſion, Mr. Mortimer, told you expreſsly, that if he had been aſked, without deſcribing them, it would have been impoſſible for him to have told what theſe models were for.

Lord Chief Juſtice Eyre. You miſapprehend the evidence there, and making obſervations upon the evidence not founded in the fact, is injurious to your cauſe.

Mr. Adam. I do not mean to miſapprehend the evidence.

Lord Chief Juſtice Eyre. He did not ſay, that he could not have known the uſe of the models; but ſaid, he could not have known that theſe models were prepared from thoſe drawings.

Mr. Adam. I am exceſſively obliged to your Lordſhip moſt undoubtedly. I aſked him, upon croſs-examination, ſhewing him the roller, if he could have known, from looking upon that roller, for what purpoſe it was intended—I think his anſwer was, he could not.

Lord Chief Juſtice Eyre. You miſapprehend him—he ſaid, he believed it was for a piſton for an air-gun, that taken together, with finding the tube, it was ſatisfactory to him that it

was

was ſo, but without finding the tube it was not ſo ſatisfactory, but that that was his opinion—what he ſaid with regard to not knowing it was, the drawing was ſo bad, he ſhould not have known that the model was prepared from the drawing, unleſs he had been told that they had had converſation upon the ſubject.

Mr. Adam. You have heard from my Lord the evidence to which I was alluding, with reſpect to Mr. Mortimer, and the obſervation I have to make upon it, as applicable to the evidence of Hill is this—that Hill undoubtedly, from Mr. Mortimer's evidence, could not conclude any thing as to the uſe of the inſtrument, Hill being an ignorant man. Conſequently all that appears from Hill's evidence is this, that a thing was made, and you will recollect becauſe it is important in the ſequel of what I have to addreſs to you; and in your conſideration of the ſequel of the cauſe, you will recollect that Hill as far, I think, as I am able to trace the evidence, is the only perſon who ſpeaks to the actual fabrication, or who aſcertains the actual making of any part of the inſtrument laid in the indictment—I mean with this diſtinction, the diſtinction of general confeſſions, upon which I ſhall obſerve hereafter.

Gentlemen, the next witneſs, is not the witneſs next in order, whoſe evidence I ſhall call to your attention, it is the evidence of Mrs. Upton, and upon the preſent occaſion I wiſh merely to ſtate this—Mrs. Upton was particularly called in order to prove her huſband's death, but no doubt ſhe was examined to ſome other circumſtances, and to the circumſtance of ſome of the things produced having been in the houſe of Upton; and you will recollect that ſhe could ſwear to none of them but the models; that ſhe could not ſwear to the drawings, nor to the tube, conſequently ſhe ſwears only to theſe models being there.

Gentlemen, with regard to her evidence, as to her huſband, that I ſhall have occaſion to obſerve upon by and by, when I come to ſtate the evidence which I ſhall be under the neceſſity of laying before you. I ſhall, therefore, reſerve that part of her evidence, to that part of the caſe.

And now I beg leave ſhortly to refer to the evidence of Steers and Puſey, who were called in order to ſhew that Upton had

ſomething which was like the tube, for that was all that it could amount to; that was all that was ſeen at the meeting of the Correſponding Society. Now, whether it was or was not the tube, upon the view which I take of this caſe, is a matter of no conſequence. I bottom myſelf throughout in the malignity and wickedneſs of Upton's character; and on his character, combined with facts and circumſtances, I aſſert, that he might have contrived ſuch an inſtrument for a wicked purpoſe, and might afterwards convert it to the injury of others, and the gratification of his own revenge. As long as I found my caſe upon that principle, I contend that it is a matter indifferent to me, as ſtanding for the priſoner, whether this was proved poſitively, or was proved as it was, in fact, doubtfully. It does not come home to the priſoner, he was not at the Correſponding Society upon the occaſion; it does not come home to the Correſponding Society, not one of them is accuſed, nor is the Society ſuppoſed to be concerned in this conſpiracy. It does not come home to one of the individuals charged in this indictment, for not one of them is ſtated to be preſent upon that occaſion. In ſhort, it is a ſtory which relates diſtinctly and ſimply to Upton, which belongs to his wickedneſs, which belongs to his malignity, which is bottomed in the advantage he thought to take of thoſe he conceived to be his enemies. The tube is cunningly and ſecretly ſhewn by him to raiſe ſuſpicion; not openly produced, but peeping from under his coat. The very mode which a falſe accuſer would adopt. Therefore, I contend, that every thing which is to be drawn from the doubtful evidence of theſe perſons, with regard to the exiſtence of this particular thing, and what it was (for my Lord examined them particularly to what it was, and they ſaid they rather believed it to be a tube, but could not ſpeak certainly to it), is evidence, that can have no weight in this caſe, as far as it regards the priſoner at the bar.—But that it proves Upton had ſome black intention.

I come now to the evidence of Mr. Ward, and it was merely to prove, that he was informed by Upton, and he informed his Majeſty's Miniſters, and that in conſequence of it the perſons were committed at a ſubſequent time. You will always obſerve, however,

however, ſomething ſingular in this caſe, that the information was given upon the 12th, that it was not communicated undoubtedly, as appears, till the 16th, but that there was no apprehenſion of any of the parties till the 27th; and that there was no advertiſement of the priſoner till the end of February; and I contend that that laſt fact, is a moſt important fact in this caſe, becauſe it ſhews, that whatever the diabolical intentions of Upton might have been; that whatever the circumſtances of the caſe might have been, at that time; that at leaſt they had not an idea that there was evidence laid before them, at that time in order to take up the priſoner. Therefore, when I come to examine the circumſtance of his demeanour, after the apprehenſion of the three other priſoners, you will always bear this in your mind, that no ground of ſuſpicion of that man can be proved to have exiſted, until ſuch time as his Majeſty's Miniſters did their duty by advertizing a reward for his apprehenſion.

Gentlemen, on the review of all this evidence I wiſh to draw your attention to what is proved, with regard to what may be called the *inſtrumentary* part of the teſtimony; that is to ſay, the fabrication of the inſtrument, and, I think, you muſt neceſſarily agree with me, that with reſpect to the fabrication there is but one witneſs, who ſpeaks poſitively to it, and that that one witneſs ſpeaks only to a ſmall part of it, the model. He does not ſpeak at all to the uſe, or to the purpoſe of it, nor do any other of the *inſtrumentary* witneſſes. The ſingle witneſs who ſpeaks to it, I ſay, is Hill, for with regard to the fabrication of the other part, with regard to the fabrication of the arms, to which I ſhall come by and by, which forms a moſt eſſential part of the ingredient in this caſe; becauſe without it the means was not complete to the end. I ſay, that that reſts entirely upon that part of the evidence to which I am now about to come, namely, the confeſſional evidence, the priſoner's declarations. Upon that part of the caſe I conjure your attention—I ſhall endeavour to impreſs it ſtrongly upon your minds, becauſe I am ſtrongly impreſſed with it myſelf. The nature of confeſſional evidence, or evidence of declaration ſuch as this,

is to be well weighed in a queſtion of any ſort. In a queſtion of this particular nature, where the overt act of fabrication reſts on the teſtimony of one witneſs only, I ſhall contend, and I think ſucceſsfully, that it is not at all to be credited; and that it is impoſſible for grave, ſerious, intelligent men, like you, laying your hands upon your hearts, in ſolemn judgment upon the life of that unfortunate perſon, to ſay, that there is that clear, diſtinct, manifeſt evidence which, according to my Lord Coke and Lord Bacon, amounts to proving an overt act of Treaſon *provably*; for you are not, as Lord Coke tells you, to deal in probabilities, you are not to deal in conjecture, but you are to ſay, to yourſelves, in the ſolemn moment of deliberation, do or do not theſe facts prove *provably*, *manifeſtly*, and *inconteſtibly*, the guilt of the priſoner at the bar.

Gentlemen, I am extremely ſorry, I am ſure, to delay you ſo long; but, at the ſame time, I am perfectly conſcious that you will be ſatisfied that I do it from a ſenſe of my duty, and that I do it from an opinion that it is moſt eſſentially neceſſary to the intereſts of my client that this caſe ſhould be thoroughly underſtood. I do not mean to ſhun any part of the caſe; I do not mean, I am ſure, to ſtate the evidence otherwiſe than it was given; and I am extremely grateful for having myſelf corrected when it does happen that, from the variety of the facts, that I am under the neceſſity of carrying in my mind upon an occaſion of this kind, I have gone on in any thing that is not a correct apprehenſion of the manner in which the fact was proved.

Upon the confeſſional evidence, or the evidence of the declarations of the priſoner, you will obſerve, that there were four witneſſes, Le Bretton, Dennis, Winter, and Penny; theſe were the four witneſſes to prove the declarations of the priſoner. Permit me, again and again, to obſerve, that evidence of declaration is of a very ſingular ſort; I am ſure I do not ſay any thing in which I ſhall be contradicted by any authority in this Court, when I ſay, that it is to be taken with great conſideration before it is admitted to prove the fact.

Gentlemen, I have already called your attention to the important

portant and ſignificant words in the ſtatute. I have read to you the commentary of Sir Edward Coke, of almoſt equal authority with the text: you find with what anxious ſolicitude he diſtinguiſhes between the words probably and provably. Unleſs we accuſe that great lawyer of vague, unmeaning expreſſions, we muſt affix a preciſe ſenſe and meaning to the word on which he dwells with ſo much force: he muſt mean the higheſt evidence of which the nature of the thing is capable; he muſt mean that which is termed legal demonſtration, ſuch demonſtration as parol teſtimony affords. Now I wiſh to preſent correctly to your minds the nature of ſuch demonſtration: it amounts to this—that if the witneſs ſpeaks truth, the fact to which he ſpeaks muſt be true. For example, in a caſe of High Treaſon, it is proved that ſuch a perſon has been out in rebellion againſt the Sovereign; all that is proved provably—it is proved according to the idea of legal demonſtration; becauſe if the witneſs ſpeaks truth, the fact muſt be true. But when evidence is given to a confeſſion, obſerve what the nature of it is: the perſon who gives the teſtimony may ſpeak truly, and yet the fact may not be true; becauſe the fact does not depend merely upon the ſtatement of the witneſs, it depends upon the ſtatement of another perſon, who has ſtated the thing to the witneſs. Therefore, that principle introduces a great doubt—introduces a neceſſity to receive with great deliberation, even amounting to heſitation, all evidence with regard to confeſſion.

But, Gentlemen, this goes much further, and is not founded in any abſtract principle of law—not in any difficult conception, or abſtract train of reaſoning; it is founded in the very nature of things. Confeſſional evidence is ſuch, that not only the perſon who makes the confeſſion muſt be clear from all motives either of hope or of fear, but his mind muſt be a mind ſo tinctured, ſo prepared, that you ſhall believe correctly and accurately what he confeſſes to be true. The perſon making the declaration muſt not be led by hope, on the one hand, or fear on the other, to ſtate circumſtances that may make in his favour. But, on the other hand, the mind which is to receive the confeſſion—the perſon to whom it is made, muſt have an accurate, diſtinct mind,

capable

capable of carrying it away; to report faithfully, without exaggeration or misrepresentation. You will observe, too, in all evidence of confession, the nature of it is such, that it is next to impossible to prefer an indictment for perjury. How is it that witnesses are secured to speak the truth? what does the law say upon the subject by its regulations? for that is the mode of considering the question. The law says, they shall come here under the terror of a penal prosecution if they do not speak the truth. A witness who comes to speak to a confession, comes to speak to that which, from the very nature of it, cannot be *negatived*; because it is impossible for any person to say a person did not say such or such a thing, all he can say is, *negatively*, that he did not hear it; consequently the person who speaks to the declaration, speaks without those risks of penal proceeding: he is safe from the restraints and terrors of the law.

Gentlemen, if you apply that to the present case, observe how strong it is; see what the nature of the question is which you have to try. It is a question of intention; that is, it is a question whether an instrument, innocent in itself, perhaps meant for the purposes of experiment, perhaps not—whether an instrument, innocent in itself, was or was not prepared for a particular purpose. Now I beg you will observe upon what the purpose rests;—it rests merely in confession. What is the indictment?—an indictment for High Treason; where the intention of the party is to be taken for the fact. The intention, in this case, to be taken for the actual killing, is to be established and proved not by any thing which necessarily arises out of the fact, but a thing, innocent in its nature, is to receive colour from different and distinct testimony—from the mere fabrication; so that even in the case, taken simply and independent of confession, it is almost impossible to indict for perjury; nay, I might say, it is absolutely impossible to indict for perjury. How then does the case stand upon the present occasion? The case against the prisoner is of this sort:—that he is indicted for High Treason; that the High Treason consists in forming a machine for a particular purpose; that one witness only speaks to a particular part of the model of that machine being actually formed.—All this is innocent: the

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only colour that is given to it is through the medium of the declaration of the priſoner, ſo as to render it guilty. Here then are two points: intention, to be proved diſtinctly from the act, which is not in its nature indictable for perjury; and that intention proved by words ſpoken by verbal declarations and confeſſions, which are not in their nature indictable for perjury.—Here, then, are two ſecurities to a falſe witneſs; and two ſafeguards, removed from the accuſed, and both occurring in the caſe of that unfortunate gentleman.

Now, Gentlemen, there is another obſervation material for your conſideration, equally founded in plain principles. We all know how very liable men are to exaggerate a ſtory: we all know perfectly well how difficult it is for a ſtory to be twice told exactly in the ſame words: confeſſion or declaration is a mere ſtory told. If the confeſſion relates to a particular, diſtinct, ſubſtantive fact, perhaps the witneſs may be able to bear it in his memory; but even then it will be very difficult to contradict it by negative teſtimony: if the confeſſion relates to ſomething more intricate than a particular fact, it is ſure never to be repeated twice without ſome variation; every day's experience, on every common report, illuſtrates this doctrine.

Gentlemen, there is a great difference in confeſſion, according to the ſubject matter to which it is applied. If confeſſion is applied to common and ordinary occurrences, in which the mind of man is not much intereſted—in which his propenſity to exaggeration (that natural bias of the human mind) is not neceſſarily excited, an attentive liſtener may be a correct reporter. But conſider how different this caſe is: here is a confeſſion, relating to what?—relating to High Treaſon; that is a thing which lays ſtrong hold of the human mind: here is a narrative relating to a great perſonage, the firſt and the beſt perſon in his dominions; upon whoſe exiſtence the ſafety of the ſociety in which we live depends; whoſe life, if violently and ſuddenly taken away by traitors, there muſt enſue ſomething dreadful and calamitous to the ſtate—a monarch, who has diſplayed every virtue during a long reign, and who lives in the hearts of a free people. What ſubject ſo likely to fire the imagination, and to lead to the

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excefs of thofe failings which are incident to the nature of man!

Conſider, too, that the priſoner at that time (for I ſhall have occaſion to ſpeak hereafter of his demeanour) was in a ſituation where he might be flattered with a hope that particular circumſtances might be advantageous to him, that he might hope to alleviate that captivity into which he had fallen. Let me entreat you principally to apply your minds to the doctrines I have laid down with regard to evidence of confeſſion; I aſſure you, Gentlemen, that I feel this ſo deeply impreſſed upon my own mind, I feel it ſo much a part of my duty to be well founded in theſe topics, that I am anxious to carry you beyond the authority of the Counſel for the priſoner. I am deſirous to follow the example of my learned friend, the Attorney General, and to ſhew you from grave, legal authority—not the ſpeech of an advocate, but the deliberate lucubrations of judges, of the wiſeſt and beſt lawyers that ever diſpenſed juſtice in this Country—that my principles are correct.

The firſt perſon I ſhall quote upon the preſent occaſion is Mr. Juſtice Blackſtone; who in his fourth volume, in which he profeſſedly treats of crimes, ſtates, with regard to confeſſion—"But haſty, unguarded confeſſions, made to perſons having no "authority, ought not to be admitted as evidence under this "ſtatute:" he is there talking of the ſtatute in queſtion, and I do not apply it to you now with regard to the queſtion of admiſſibility or inadmiſſibility. The evidence is undoubtedly admitted under the firſt of all authority—the judge who preſides here. But I apply it as it regards the credibility attached to the evidence, and not with regard to the admiſſibility.

Mr. Juſtice Blackſtone, on the ſame topic, goes on to ſay—"But haſty, unguarded confeſſions, made to perſons having no "authority, ought not to be admitted as evidence under this "ſtatute; and, indeed, even in caſes of felony, at the common "law, *they are the weakeſt and moſt ſuſpicious of all teſtimony*; "ever liable to be obtained by artifice, falſe hopes, promiſes of "favour, or menaces; ſeldom remembered accurately, or re-

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" ported with due preciſion; and incapable, in their nature, of " being diſproved by other negative evidence."

Gentlemen, it has lately been laid down in the very place in which I am ſpeaking, from very high authority, exactly in the ſame manner. In Mr. Leach's edition of Hawkin's Pleas of the Crown, O. B. 1786—" A confeſſion, whether made on official " examination, or in diſcourſe with private perſons, which is " obtained either by the flattery of hope or the impreſſions of " fear, is not admiſſible evidence."

Gentlemen, I do not now contend, as I have ſtated, for the inadmiſſibility of the evidence, I am only ſhewing you that lawyers of great eminence have laid down the doctrine with regard to admiſſible or inadmiſſible, I am laying down rules to you, who are to weigh the credit of the teſtimony; and I contend, that every argument as to the credit muſt apply where there is a queſtion about the admiſſibility or inadmiſſibility of the evidence.

I come now, laſt of all, to the authority relied upon by the Attorney General.

Mr. Juſtice Foſter ſays—" Words are tranſient and fleet- " ing as the wind; they are frequently the effect of ſudden " tranſport, eaſily miſunderſtood, and often miſreported." He, upon this occaſion, is talking of words with another view; not whether words are to be conſidered as treaſonable or not treaſonable, merely words ſpoken; when he uſes the marked expreſſions to which I have referred. Now if words uſed in converſation are of that nature, all confeſſional evidence, all declaration is exactly of the ſame nature; becauſe all declaration conſiſts in words. But upon the preſent occaſion, the declaration conſiſts in words extending to a conſiderable length, it conſiſts in the preciſion and accuracy of theſe words; and I contend, therefore, that the doctrine applicable to words, as laid down here, to be eaſily miſunderſtood, and often miſreported, is applicable to all declarations and confeſſions of every ſort. But, Gentlemen, in another part of this moſt excellent book, he lays down the principle correctly and accurately, in a very few words, which I am afraid I have been very feebly able to illuſtrate

illuſtrate and to enforce upon your minds. In the caſe of Willis, tried for High Treaſon, it occurred to conſider whether a confeſſion is evidence proper to be left to a jury or not, under particular circumſtances, which I may have occaſion by-and-by to ſtate. Mr. Juſtice Foſter, after diſcuſſing that caſe, which it is unneceſſary for me to trouble you with at preſent, ſays—"The "reader ſees that opinions have been various touching the ſuffi- "ciency of this ſort of evidence, that is, the admiſſibility of "confeſſions; but perhaps it may be now too late to "controvert the authority of the opinion in 1716, war- "ranted as it hath been by the later precedents; all I inſiſt "on is, that the rule ſhould never be carried further than "that caſe warranteth—never further than *to a confeſſion made* "*during the ſolemnity of an examination before a magiſtrate, or* "*a perſon having authority to take it, when the party may be* "*preſumed to be properly upon his guard, and apprized of the* "*danger in which he ſtandeth*, which was an ingredient in the "caſe of Francia and of Gregg, cited in the argument in "Francia's caſe." He then goes on to give the reaſon, and he gives it in his ſimple and eloquent manner—"For haſty con- "feſſions, made to perſons having no authority to examine, are "the weakeſt and moſt ſuſpicious of all evidence; proof may "be too eaſily procured." I beg, Gentlemen, you will mark the words—"Words are often miſreported; whether through "ignorance, inattention, or malice, it mattereth not to the de- "fendant, he is equally affected in either caſe, and they are ex- "tremely liable to miſconſtruction; and withal this evidence is "not, in the ordinary courſe of things, to be diſproved by that "ſort of negative evidence by which the proof of plain facts "may be, and is, ſo often confronted."

Why then, Gentlemen, I have, upon the preſent occaſion, the authority of this author expreſſed in the moſt ſolemn and emphatic language, in order to enforce upon your minds the doctrine which I have taken the liberty of laying down. You ſee, from Mr. Juſtice Foſter, that there was a time when there was a queſtion with regard to the admiſſibility of confeſſional teſtimony: you ſee his opinion with regard to the admiſſibility

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of that teſtimony. Whenever there is a queſtion of admiſſibility or inadmiſſibility, of competency or incompetency, it neceſſarily involves in it a queſtion of credit. If the queſtion of admiſſibility is got over, then the queſtion of credit goes to the Jury undoubtedly; but it goes to the Jury clogged with every argument that can be applied to the credit of teſtimony—it goes to the Jury liable to every obſervation that could have been made to the Judge, in order to prevent him from receiving the teſtimony. I am ſure, therefore, that I am in my proper place, when, upon the effect of this confeſſional teſtimony, I am addreſſing you upon general principles, derived from the works of learned and ſound lawyers; deliberated upon and ſet down in their writings in the moſt grave and moſt ſerious moments.—In the contemplation of what?—In the contemplation of a caſe preciſely ſimilar to the preſent; in the contemplation of a caſe of a confeſſion to particular words ſpoken. I ſay, that I am in my proper place when I am ſo addreſſing myſelf. Therefore, in the language of my Lord Chief Juſtice Hale, who lays down the ſame doctrine, but whom I do not trouble you with citing *verbatim*, upon the preſent occaſion, talking of the bleſſings of our conſtitutional mode of trial, particularly applying it to Treaſon, he ſays "Juries are not only triers of the cauſe, but they are triers of the credit of the witneſſes; nay, they are not only triers of the cauſe, but they are triers of the credit of the facts." Accordingly, I come round again to the principle from which I took my departure, namely, that in point of legal demonſtration, this fact of intention is not provably proved; becauſe legal demonſtration is that by which, if the witneſs ſpeaks true, the fact muſt be true: but, in the caſe of confeſſional evidence, the witneſs may ſpeak true, according to his conception of the thing and yet the fact may be utterly falſe. It depends upon two things—upon the mind which conveys it, and upon the mind that receives it. And then it is to be weighed with a conſideration of thoſe other circumſtances which I have taken the liberty of ſtating and enforcing upon your minds; namely, that it is unrepellable by negative evidence—that it is not indictable for perjury. So that poor old man, who came here to give teſtimony

mony to theſe moſt grave and ſerious declarations, in which correctneſs conſtitutes the moſt important and principal quality, of which it is the eſſence, may as well be believed with regard to the incredible ſtory he told about the hare having lived amidſt the dogs, without being touched by them, as to what he has ſtated reſpecting the converſations of the priſoner.

Gentlemen, I muſt beg leave to enforce this upon your mind, becauſe I am perfectly confident that honeſt, juſt, and humane men, as you are, you will not touch a hair of that man's head if you are convinced that the caſe is only probably proved: that you will require to be convinced that it is provably proved; that is to ſay, that the facts upon which the intention depends muſt be ſuch facts as are true from the very nature of the teſtimony.

Gentlemen, Mr. Juſtice Foſter ſays, (as you have heard from the book), the evidence of confeſſion is corroborative evidence. What does he mean by that expreſſion?—He means that it is auxiliary evidence. Auxiliary evidence for what?—To aſſiſt the overt acts previouſly eſtabliſhed. Does he not, then, when he uſes that word corroborative in 1756, mean the ſame thing that Lord Coke did, when he ſaid, two centuries before that period, it muſt be proved provably. Mr. Juſtice Blackſtone confirms the doctrine; and it is acknowledged by the quotation from Hawkins, in 1786. I have, then, the whole hiſtory of the law in my favour; the words of the ſtatute in my favour; and the expoſition of the ſtatute, as expounded by Lord Coke: I have the doctrine of criminal juriſprudence, as carried into a Court of Juſtice by the enlightened and great mind of Lord Bacon, acting as proſecutor for the Crown: I have the ſolemn opinion of Mr. Juſtice Foſter: I have it laid down by Mr. Juſtice Blackſtone, whoſe eminence you are all acquainted with, and whoſe works are ſo popular that no doubt you have read them:—I have all theſe different teſtimonies, confirming the doctrine which I have laid down; and I am ſure when you come to examine this confeſſional evidence, you will, with mercy and diſcernment, examine again and again whether it is poſſible upon ſuch teſtimony to convict the priſoner, under ſuch circumſtances, of an intention ſo proved. When he ſtood

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in ſuch a ſituation of inducement to ſpeak raſhly—and when the witneſſes ſtood in a predicament not to retain correctly. I am ſure you will heſitate much before you permit yourſelves to believe this.

Now, what is the teſtimony actually given; I have mentioned the four witneſſes, Dennis, Winter, Penny, and Le Bretton. I have collected the different mode in which they ſwear, with regard to this particular point. As to the other points of their teſtimony, that is a different conſideration; I will come to it by-and-by. Le Bretton ſays, he heard him ſay he was one of thoſe that invented the gun to ſhoot at his Majeſty. Dennis ſays, he ſaid the King was to be aſſaſſinated by a dart blown through a tube, and he knew how it was conſtructed. Winter ſays, he ſaid that he ſhot at his Majeſty, and damned unluckily miſſed him. Penny ſays, that he ſaid he was one of the ringleaders of the three that attempted to blow a dart at his Majeſty in Covent Garden.

Now, obſerve firſt of all what the fact is, upon which the indictment reſts, upon which the proſecutors depend for your verdict of guilty. According to their caſe a conſpiracy exiſted in September 1794, that conſpiracy was diſcovered by Upton; in conſequence of Upton's diſcovering it, three of the conſpirators were arreſted; Upton was only not impriſoned himſelf, becauſe he was the ſpy and diſcoverer; Croſsfield was never mentioned nor adverteſed, till the month of February after; in the mean time this plot, if it ever had any exiſtence at all, was totally at an end. The poſitive direct evidence upon which my friend muſt reſt his right to call upon you for a verdict againſt the priſoner, is this, that here was a plot in which this priſoner had a ſhare; which plot was completely deſtroyed and annihilated, was put an end to by the arreſtment of three of the principal conſpirators (as they are ſuppoſed to be) in the month of September; and what is this man doing, he is in the harbour of Breſt, in a priſon ſhip, in a ſituation where ſuch converſation might avail him with the French, or he might think ſo. With an impreſſion on his mind of that ſort, to theſe people, ſuch as you have ſeen them, he gives four contradictory accounts; they give four contradictory teſti-

monies. You will observe, some of them suppose that this thing was actually done; some suppose it done in one way; others in another. Now the fact upon which the cause rests, according to the case of the Crown, is this, not that the thing was actually done, but that it was proposed to be done, and was disappointed; that the intent was never carried into execution, even to the length of fabricating the instrument. Does not that shew you, that the very testimony in this case is of so fragile a nature, so brittle and untangible in itself, that it is impossible it should make an impression upon honest humane minds, upon just or upright minds, or minds of integrity and discernment. Is it not clear from this, that all the general doctrines which are written in the books, are peculiarly material in the consideration of this evidence, and that the testimony now before you, is as it were calculated to illustrate the wisdom of those profound and eminent lawyers, to shew the infinite risk of admitting such evidence. Is a person like Winter, believing the most ridiculous and improbable stories, contending even now before you on his solemn oath, earnestly for their truth. Treated, as he himself admits, like a person that was scoffed at and jeered by every one. Is a man like Dennis, who seemed to have an enmity against the prisoner, from his declarations at the Privy Council to Cuthbert. Is a man like Le Breton, who I will prove to you, wished Clarke his Captain to say, that he overheard the declaration. Are witnesses such as these to convince you that instrument, the preparation of a small part of which is proved by one witness only, (the witness Hill), the existence of which never was proved at all. Which received no criminal complexion in this cause whatever; which received no particular application from any of the witnesses to the preparation; was meant for the deep and shocking purpose imputed by the indictment. The confession of the prisoner is contradictory, and contrary to the nature, directly adverse to the case upon which the Attorney General must rest his cause. Can you by possibility believe such confession? But the case does not rest even here. You have had the evidence of Penny; you have had the evidence of Winter; you have had the evidence of Le Breton; you have had the evidence of Dennis. Gentlemen, you will recollect

collect their teſtimony with regard to the ſituation of the ſhip; with regard to the different perſons who were in captivity; who, if theſe things were ſpoken, muſt have heard them; becauſe they were the meſs-mates and intimates of the priſoner. You will recollect above all, Le Bretton's teſtimony, with regard to Captain Clarke; and you will recollect with what unwillingneſs, when I put ſome queſtions to him, he choſe to admit that he had any intercourſe with Captain Clarke, at Mrs. Smith's. You will recollect Le Bretton's teſtimony under theſe particular circumſtances. Then in what ſituation do I ſtand? Here are the perſons whom I have already characterized, and I will not trouble you with characterizing again, who ſwear to theſe confeſſions, to which the witneſſes ſtate, that there might have been three times four witneſſes preſent when they were made; who all came to England in the cartel ſhip; who knew the priſoner; who lived in intimacy with him; who were likewiſe men of education, and who meſſed at the ſame table with him; all of whom might have been brought here in order to prove this caſe.

Gentlemen, it was in the power of the Crown to have brought them; to what quarter of the world are they fled?—above all, where is Captain Clarke?—I cannot conceive why he is not here; he was examined to the fact. The counſel for the Crown knew his teſtimony. It was impoſſible for us to bring him here, we could not bear the expence of his detention here. But I will prove moſt diſtinctly, that the converſation paſſed between Le Bretton and Captain Clark, as I have ſtated it. That is not all, but I ſtand in this fortunate predicament; I am capable by mere accident, for it was not in the power of this poor man to afford to keep the witneſſes at a great expence; they might but for accident have ſailed from this Country. I am able, I ſay, to produce two of the witneſſes who meſſed with, and conſtantly aſſociated with the priſoner. Now, mark the ſituation in which I produce theſe witneſſes, and mark the argument which is to be derived from this circumſtance, with regard to this confeſſional teſtimony. In the firſt place, I will prove to you, from theſe witneſſes, that the priſoner expreſſed great chearfulneſs at leaving France. In the next place I will prove he might very eaſily

have remained behind, if he chose it. I tender these witnesses to the cross-examination of my learned friends; I know their powers and their abilities, I know the sense they have of their duty, and I am ready to risk the confirmation of their case by those witnesses.

I say, then, if witnesses of respectability, that is to say of the highest respectability to be found in the place at the time, always proved to have been in the general society, are brought before you, and swear that they heard no such declarations; does it not amount very nearly to a negative proof. Were they not the best witnesses to have had upon the occasion; were they not the persons who would be most likely to have retained with fidelity the confessions, if there had been any. You will remember that there were two Mr. Bryon's, and others, whose names I need not recite to you mentioned. All of them were brought out of this cartel ship, where are those persons? Gentlemen, their absence is proof, strong proof, in favour of the prisoner; especially when the positive testimony is contradictory to each other, and each witness in a manner contradictory to himself.

Gentlemen, I find it necessary for me, from time to time, in order that I may omit no part of the serious duty that I have to discharge to my client upon this occasion, to summon my recollection to be sure that nothing has escaped me—and upon reflection it does not seem to me that in going over the evidence I have omitted any thing, that might be important for me to observe upon, so far as I have gone. It is a great satisfaction to me, to think that my learned friend who sits by me, who will make up for my deficiencies, is to have an opportunity of addressing you after our testimony is called; and it is still a greater satisfaction for me to think, that the learned persons who preside upon this occasion, and who understand the law, and whose opinions upon evidence are as enlightened and powerful as any that exist in these times, or in any times, will have an opportunity of discharging their duty towards the prisoner and you, upon this occasion.

Gentlemen, what I now state, I have not placed last, from the dread of encountering it; for I am convinced, that if there is any impression from that part of the subject, that I shall be able

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to relieve your minds from it; I place it laſt, becauſe it ſeems in its proper order. Gentlemen, I come now to the conduct and demeanour of the priſoner, from which my learned friend wiſhes to draw a proof of his guilt. That is, he ſtates his conduct to have been ſuch immediately after the diſcovery and the apprehenſion of theſe priſoners, as to lead to the ſuppoſition that he from that time, down to the time that he himſelf was apprehended in Cornwall, was in ſuch places and acting in ſuch a manner as to lead you neceſſarily to conclude that he muſt be guilty.

Gentlemen, in the firſt place I am ſure that is a concluſion that you will not raſhly jump to upon ſuch evidence as you have had of it, even if there was no anſwer to be given to that evidence. Becauſe you, who know the nature of man, know perfectly well, that when a perſon is likely to be put in a ſituation of peril, although he may not be guilty, he may wiſh to keep out of that ſituation of peril; ſuch conduct is perfectly natural, and therefore it is too much to ſay that a bad motive is always to be imputed, when in point of fact, unleſs a bad motive is viſible, the motive may be indifferent; and you ought to impute that motive which leads to mercy, rather than that which leads to a concluſion of guilt. But conſider what the nature of this gentleman's demeanour was; he remained ſome days in London after he knew of the diſcovery of this ſuppoſed plot; he then went to Briſtol. Now the teſtimony that you have with regard to his being at Briſtol, is of this nature; he aſſumed no feigned name; he retired into no private place; he made no attempt to leave the Country. Yet Briſtol is a ſea-port town of the firſt reſort; there is conſtant and facile communication to every part of the world; to neutral ports, to places where he might have enſured protection. Whereas, if you know the South Sea Fiſhery Trade, you muſt be aware that they touch at no place; and though a long voyage, they return to this Country without landing any where. He goes to Briſtol, and never attempts to leave the iſland, at Briſtol; he never ſecretes himſelf; he goes into places of public reſort, and does not change his name. Now, what is the particular ſituation of Briſtol; compare the ſituation of it with the ſituation of London. I need not ſtate to you, but it

is incumbent upon me to make every observation, however common it may be, I need not state, that a man at Briſtol would be more eaſily diſcovered than in London. It is a ſmall place, and has a great intercourſe with the capital. He afterwards returns to London, and you obſerve it is the month of January before he embarks. He goes on board at Portſmouth, a ſea-port town, where there is a conſtant and numerous concourſe of his Majeſty's Officers; perſons always upon the watch. A town where there is, to the honour of the Chief Magiſtrate be it ſpoken, the beſt regulated police that exiſts in any town in the Kingdom. Can you have an imagination that a perſon ſhould land under his own name, and go to places publicly to buy things, who is ſought after, as is ſtated, to be ſeized by Government; that he ſhould not conceal himſelf at all; and that his demeanour ſhould be held criminal. They put into Falmouth; from Mr. Le Breton you have it very unwillingly ſtated that he went but once aſhore, under no concealment. If I had had Captain Clarke I could moſt undoubtedly have eſtabliſhed, beyond a contradiction, that he lived very much on ſhore, and with him too; but I have it not in my power to have that perſon here; I may be able perhaps to eſtabliſh ſomething like it by other teſtimony. Obſerve the ſituation of Falmouth; it is the moſt weſterly port in this Kingdom, the place from whence all the public packets go; it is a ſmall town, of only one ſtreet, where no perſon can conceal himſelf; it is a place of reſort for all the King's Meſſengers, the very perſons ſent to apprehend thoſe accuſed of Treaſon; it is the place, therefore, where ſuch a perſon was more likely to be taken, than in any other place in the Kingdom. I have the evidence that he did go on ſhore once, I hope to have the evidence that he went on ſhore more frequently; but I can ſay this, upon the evidence before you, that at this time he never changed his name, and yet they are there from the 3d to the 13th of February; and all this time it is ſuppoſed that there was an eagerneſs, an anxiety upon the part of Government to ſeize this perſon.

The veſſel ſails, and is captured on the 15th, I come now to a moſt important fact indeed. You have had the evidence of

confeſſion. His declarations under the circumſtances which I have ſtated. You have had the evidence likewiſe from theſe witneſſes, ſtating that he expreſſed great joy at the idea of getting to France. You have had the declaration likewiſe ſtating, that he had taken ſome part in the minute arrangements for the French, at Breſt. In ſhort, you have this as evidence of declaration—hark what you have upon the other hand. You have the evidence of the fact itſelf—of what fact?—of a fact in which he riſked his life in a double view, where he might have been killed in the attempt, or where he muſt have gone to inevitable execution, if he had not been killed in the attempt. What was the attempt? An attempt, together with the others, to reſcue the French ſhip. To ſeize the mariners and captain of the French ſhip that captured them, for the purpoſe of eſcaping—of eſcaping from whence?—of eſcaping from France, not of going to France—at what riſk? at the riſk of his life, at the inevitable riſk of his life, he is ſtated to be one of thoſe; I ſhall prove it more inconteſtibly, perhaps, but he is already upon the evidence proved to be one of thoſe who joined in that deſign. I am not talking of the morality of the attempt. I am not talking of the abſtract principle that ought to guide men, perhaps, in that ſituation. I am ſure my Lord will think, however, that whatever may be the abſtract morality, or whatever caſuiſts might ſay upon that point, that I am uſing an unanſwerable argument for my client upon the preſent occaſion. Becauſe I am eſtabliſhing an act againſt looſe declarations.—What are the declarations? His eagerneſs to go to France. What is the nature of the declaration? What the ſituation of the witneſs? That he cannot, on his evidence of confeſſion, be convicted of perjury. What was ſaid by that great and enlightened luminary of the law, Lord Mansfield? What was his perpetual doctrine in the diſtribution of criminal and civil juſtice, for the long period of time which he preſided with ſuch eminence and effect, over the juſtice of this Country? What was it but this? Look to the facts and circumſtances, ſee how what lawyers call the *evidentia rei* is. See how the thing itſelf ſtands, for that can never lie. No ingenuity can twiſt it. No croſs-examination can ſhake it. No looſe words can vary it.

It is a thing that carries conviction to the mind irrefragably if it is proved. Then I have proved from the mouth of unwilling witneſſes, From the mouth of that unwilling witneſs Le Bretton. From the mouth of the other witneſſes who came here to prove the confeſſions. Who prove as a confeſſion the joy of this man on his going to France; and theſe very witneſſes give me the fact, that he attempted, at the riſk of his life, to ſeize the captain and the French ſhip that had captured them, along with the other Engliſh ſailors, with a view of releaſing themſelves from French captivity, and avoiding French bondage. I am ſure if he were the man they attempted to deſcribe him, he would never have been impreſſed with ſuch feelings as thoſe. Would a baſe man who is ſuppoſed to have aimed at the life of his Sovereign. Who is ſuppoſed to have been guilty of every ſpecies of immorality. Who is ſuppoſed to have entertained public principles detrimental to the firſt principles of this bleſſed Conſtitution (which I hope and truſt will laſt forever.) Would it be ſuppoſed that a perſon in that ſituation would, at the riſk of his life, attempt to free himſelf. No. What would the natural conduct of ſuch a man have been—It would have been to have entered into a conſpiracy for the purpoſe of diſcovering it. Does it appear from theſe men that he ever diſcovered it? He entered into that deſign, at the riſk of his life he did it to do what? to releaſe himſelf from French bondage—to reſtore himſelf to Engliſh freedom. Gentlemen, he did more, the fact proves this; it proves that he was ſo incapable of the crime imputed to him, that he was not capable of diſcloſing the deſign to the French, who then moſt undoubtedly would have received him with joy in France. Who then would have ſaid, you are our deliverer. Who then would have handed him over to the Convention, to receive a reward for the practices which are imputed to him, but not proved in the ſmalleſt degree, for all that is proved is, that he ſtood talking at the poop with the commander. Lay this fact up in your minds. Recollect the character of the witneſſes who prove it. Recollect the importance of the fact in all its bearings, and then tell me whether, when it is united with the common obſervation on the nature of man,

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with thoſe learned obſervations upon the nature of declaratory confeſſional evidence; whether it does not amount to the moſt unanſwerable proof that the priſoner, whatever the levity of his character may be (and he is proved to be of a light character) and whatever his debaucheries may be with reſpect to wine, or opium, or women; (and I am not ſtanding here to defend the moral character of the priſoner, but to ſtate reaſons, and I am perſuaded unanſwerable reaſons, why you will not ſuppoſe him guilty of the crime with which he is charged) when you unite that fact with the nature of the confeſſions, it will be difficult to conceive that the priſoner could be the man, to conceal a deſign againſt the French Captain, and to harbour a deſign againſt the life of his Sovereign.

Gentlemen, I really feel now that I have exhauſted almoſt every part of this caſe, yet there are two circumſtances remaining, which I likewiſe will venture to ſtate my opinion upon to you; and, I think, I can account for them in ſuch a manner, as that even if any impreſſions ſhould remain upon your minds now, with regard to the priſoner, they likewiſe will be wiped away. The firſt is his conduct with reſpect to his name in France—The next is his conduct upon his landing in England. —His conduct with reſpect to his name in France ſeems, to me, to be of a moſt extraordinary nature. If any thing is to be imputed to it at all.—You obſerve, from the evidence of all the priſoners, that he was known to every man that came over in the cartel, that he lived publicly with them, and made theſe declarations, as they ſay, before ſeveral other people. None of whom, however, were called, and he is then with a deſign, and in order to impute this Treaſon to him, to be ſuppoſed to have changed his name. Now if I have deſtroyed the colour of the attempt to be given to the fabrication of this inſtrument, by a confeſſional evidence, that circumſtance alone will have little effect.

But, in the firſt place, you have it proved that he was a man in very difficult circumſtances, as to his pecuniary affairs. In the next place, will you conſider this according to the common

rules

[illegible]

an actual crime committed; yet drunkenneſs, moſt undoubtedly, where you are only to raiſe an inference from a man's actions, will deſtroy all inference to be raiſed from thoſe actions.

Now, obſerve what he does after he had that converſation and colloquium with the conſtables, which they ſtated. He falls faſt aſleep, and he ſleeps all the reſt of the way, for more than the half of the way. Is it not a moſt extraordinary thing, that if this perſon was not either inebriated, or in ſuch a ſtate that his mind ſhould receive no impreſſion, from the apprehenſion of the crime for which he is now tried, that after a converſation of this kind he ſhould have fallen into that ſtate, and remained in it all the reſt of the way. I again call upon you to examine this caſe according to the principles of human nature, and the rules of probability; and ſay, whether the concluſion muſt not neceſſarily be that this ſtrange wild converſation was the effect of inebriety.

I have now, I think, gone through every thing with relation to the evidence that has been given, and it is now my purpoſe very briefly to addreſs you upon the nature of the evidence which I ſhall lay before you. Gentlemen, I ſhall do this very briefly for many reaſons.

Firſt of all, becauſe I have conſumed a great deal of your time. In the next place, becauſe my learned friend, who comes after me, I know will do it with great ability, and with great advantage to his client.—But, Gentlemen, there is a part of it which I am under a neceſſity of ſtating to you very particularly, becauſe it relates to one of the main and ſingular features of this cauſe. Gentlemen, you have heard again and again, from Mr. Attorney General, of the name of Upton; you have heard that name from all the witneſſes, except the witneſſes to the declaration, who have been called; you have heard that name likewiſe from Mrs. Upton, the widow, as ſhe ſtated herſelf, of Mr. Upton. Gentlemen, I hardly know how to ſtate to you the extraordinary circumſtance I am about to mention. There was no part in this caſe, I do aſſure you ſincerely, that gave me more anxiety than the report that this perſon had been drowned, or was no more. I know that if this perſon had

had been brought here, that his demeanour alone, and those circumstances which could have been proved respecting him, would have completely satisfied your minds upon this subject, and that all those observations, that I have had the honour of addressing to you, would have received together a double aid, merely from his demeanour, and from his character.

Gentlemen, the evidence of Mrs. Upton is, that her husband's HAT has been found, the only part of his apparel, and that he left a seal with her the morning he went away. I could not understand what my learned friend, Mr. Garrow, meant by that question if it was not this, to impute that this was a token of love and friendship, which he left with a wife whom he was to see no more. Therefore, it is to impress this idea, that he had the premeditated intention of taking away his own life, I can put no other sense upon that fact. Gentlemen, his hat has been found, Mrs. Upton did not say that his body had been interred, did not say his body had been found; and yet it is a rare thing, indeed, if a person has been drowned, or if a person has been made away with, that there should be nothing found of the body. And it is more rare in this Country than in any other, because we all know there is a legal proceeding upon all events of that sort.

Gentlemen, Upton has not appeared since that day. I can assure you it has been an anxious wish of mine that he should; whether I can shew that Mr. Upton will appear again in this world or no, I am sure I cannot pretend to say; but I am perfectly sure of this, that I shall be able to lay before you testimony, which will at least amount to as strong testimony of his life, as Mrs. Upton's amounts to of his death.

Mr. Attorney General. The Court stopped me in this, I only now lay in my claim to answer the evidence if any such is offered.

Mr. Adam. Gentlemen, I have received the intimation of my learned friend, as I receive every intimation from him, I am sure with great respect, and I have considered (as far as the moment will give me an opportunity of considering) what course I shall steer upon this occasion. And, Gentlemen, I have no hesitation in saying to you, and in saying to my Lord, that

that whatever the wiſdom of the Court may hereafter determine, with regard to the teſtimony that my friend wiſhes to propoſe upon that ſubject, I think it ſo eſſential to this caſe, in one point of view, not at all eſſential in another, which I ſhall ſtate by and by, that the evidence with reſpect to Upton's doubtful ſituation ſhould be laid before you, that I ſhall certainly think it my duty to do it. When I ſay in one reſpect, and not in another reſpect, I will ſtate, to my learned friend, how I do not think it eſſential in one reſpect.—It is not from the leaſt idea that every diligent ſearch, that every active enquiry that talents and integrity can direct, and induſtry and integrity execute, has not been uſed upon the preſent occaſion, in order to obtain this man, and in order to bring him into a Court of Juſtice, becauſe I know, perfectly well, that my learned friend is that perſon who never ſtates for effect, that which he does not mean; and, therefore, when I ſay that I ſhall give evidence reſpecting the doubtful ſtate of Upton, I ſay that, moſt undoubtedly, without the leaſt view, or the moſt diſtant hint, that every induſtry has not been uſed, and no perſon can pay any man higher reſpect than I do the perſon who exerciſes the function belonging to that ſituation.

But in another reſpect I think it moſt eſſential; I think it moſt eſſential for this reaſon, becauſe if I can raiſe a doubt in your minds with regard to the exiſtence of this man. If I can faſten upon your underſtandings, a belief that this man is not dead, but has gone out of the way. If I can raiſe a preſumption in your minds, that the ſeal was delivered as a trick and as a plan: and that this man (who had committed every other crime almoſt) had contemplated, or at leaſt wiſhed others to believe that he contemplated to end his life by ſuicide. If I can eſtabliſh thoſe things, I eſtabliſh the foundation of this plot, to lodge in a character, and to reſult from a mind fraught with ſuch infamy. Loaded with ſuch opprobrium, that I hardly know how to find words to expreſs it. Therefore, as it has its origin in this man. As it intrinſically has its origin in him. As it declaredly has its origin in him, I think, judging as I now do, under the friendly warning of

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the Attorney General; judging as I now do for the intereſts of my client, I think it eſſentially neceſſary to lay this evidence before you.

Gentlemen, I have already obſerved upon the effect of that evidence, and, therefore, I will not take up your time one moment longer upon that part of the ſubject; when that evidence is given, it will be for my friend to direct your attention to the effect of that evidence; and if the caſe ſhould take the turn, which it ſeems it may poſſibly take from what my learned friend, the Attorney General ſtates; I then may have an opportunity again, perhaps, of ſtating ſome words to you upon the whole of the evidence relating to Mr. Upton.

Gentlemen, the other evidence which I have to lay before you, I have almoſt ſufficiently pointed out in the courſe of what I have ſaid.—I ſhall produce ſome witneſſes, who were in France, to the points there.—I ſhall produce a variety of witneſſes to Upton's character.—I ſhall produce a variety of witneſſes to the circumſtances of the times, though they are proved by ſuch hiſtory as will be admitted; and a variety of witneſſes to the circumſtances of the diſputes, of the rancour, of the animoſity, and of the challenge between Upton and the other priſoners, and there my caſe will reſt.

Gentlemen, I have now little more to add.—I have in the firſt place, however, to return to you my moſt ſincere, and I do aſſure you, Gentlemen, my moſt grateful thanks, for the profound attention which you have been pleaſed to pay to me during a very long addreſs, upon a very important ſubject, in a caſe in which I felt great and almoſt inſupportable anxiety.

Gentlemen, I cannot fail to have perceived, from the nature of the evidence, that prejudices may have ariſen in your minds, or in the minds of thoſe who heard the evidence, with regard to the priſoner at the bar; for the evidence certainly went to a variety of points which tended to ſhew the general diſpoſition and tendency of his mind, but not the particular application of that mind to this particular fact. I am ſure that you will lay aſide all prejudices, except ſuch as the evidence neceſſarily impoſes upon you. Gentlemen, the unfortunate perſon at the

bar

bar stands now before you, after you have heard the evidence which I have stated, to have his deliverance, or to have a verdict of Guilty. The whole form of my address has, I hope, been calculated to impress soberly, seriously, and I trust without any impropriety, anxious as I am to discharge my duty to my client, upon your minds the necessity of an acquittal. I wish you to consider always upon what principally this cause depends—I wish you to recollect, that there is no colour whatever given to the Treason in question but from the evidence of confession. I will not weary you with a repetition of arguments, or even with a summary of arguments, upon that part of the subject: I have relied on authorities from times when men spoke with great force, and thought with great correctness. Let me, then, impress on your minds, in words much more emphatic than any that I can invent, the particular duty that you have upon that particular branch of this serious cause.

Gentlemen, my Lord Strafford, when he was tried for such a crime at the bar of the House of Lords, upon evidence such as you have heard, said, with that venerable and powerful eloquence which belonged to his superior mind—"*It is now ages since any* "*man was touched to such a heighth on such evidence.* We "have lived happily for ourselves at home—we have lived glo- "riously abroad to the world; let us not awake those sleeping "lions to our own destruction—those sad precedents of judicial "disgrace, which have lain so many ages by the wall forgotten "and neglected."

Gentlemen, let me apply these words to the present case; let me entreat you, not slightly upon such evidence, to awaken these sleeping lions. What is evidence against one man may be evidence against all.—The case of every individual prisoner that comes before a Jury is the case of the whole community; because the whole community are interested in the distribution of justice, and in the principles upon which Juries decide. This, in that view of it, like every other case, is a most important one. In that view of it I intreat you to consider of it; and, without adding one word more, I now, on behalf of my client and myself, return you my sincere and humble thanks for the attention

with

with which you have honoured me; and I anxiously implore Heaven so to enlighten your minds, that you may deliver your judgment in mercy, by a verdict of acquittal.

EVIDENCE FOR THE PRISONER.

Mr. Gurney. We shall now call evidence to disprove the existence of the conspiracy charged in the indictment.

Mr. James Parkinson, (sworn)

Examined by *Mr. Gurney.*

Q. What is your profession?

A. A surgeon and apothecary.

Q. Where do you live?

A. In Hoxton-square.

Q. Were you in the months of August and September, 1794, a member of the Corresponding Society?

A. Yes.

Q. Did you, at that time, frequently attend their meetings?

A. The meetings of the Committee of Correspondence, not the General Committees.

Q. Was a person of the name of Upton a member of that Committee?

A. No.

Q. Was Mr. Le Maitre a member of that Committee?

A. No.

Q. Was Mr. Higgins a member of that Committee?

A. He was.

Q. Was Mr. Smith a member?

A. He was.

Q. Were there, to your knowledge, any enquiries instituted in

in that Committee, or in the General Committee, by either Le Maitre, Higgins, or Smith, reſpecting Upton?

A. By Higgins and Smith there was an enquiry inſtituted, at the requeſt of the Committee of Correſpondence, among whom I was one who was very ſolicitous for that enquiry into the character of Upton.

Q. What was the charge which they then brought againſt Upton?

A. It was ſtated either by Mr. Smith or by Mr. Hodgſon that he had heard it reported that Upton had ſet his houſe in Coldbath-fields on fire.

Q. Was that enquiry purſued to any conſiderable length?

A. They were deſired at a meeting of the Committee to make the enquiry.

Lord Chief Juſtice Eyre. You do not mean, I hope, to detail to this Court the proceedings of ſuch a Committee upon a charge which ought to be heard here, and not there; if you go to the point to ſhew that there was any enmity between Smith and Higgins and Upton, very well; but I beg, for the honour of this Court, that we may not have their proceedings detailed here.

Mr. Gurney. I only wiſh to ſhew, that the enquiry was inſtituted at the inſtance of thoſe perſons; with ſubmiſſion to your Lordſhip, I could not come at the effect without the cauſe.—Were there, in point of fact, any diſputes upon that occaſion between Smith, Le Maitre, or Higgins, and Upton?

A. I can only ſpeak of any diſpute that ſubſiſted between them by the report of Smith and Higgins.

Q. That is not evidence.—Did you, upon that occaſion, ſee Upton yourſelf?

A. Only once; which was for the purpoſe of delivering to him, or carrying a letter to be delivered to him, expelling him from that Society.

Q. Were you at any meeting of the Correſponding Society, at which Smith, Higgins, Le Maitre, and Upton were preſent?

A. At one meeting.

Q. Did

Q. Did any thing paſs at that meeting between theſe parties, either peaceable or hoſtile?

A. Nothing particular.

Mr. James Parkinſon.

Croſs-examined by *Mr. Attorney General.*

Q. Are you the ſame Mr. Parkinſon that was examined here ſome little time ago?

A. The ſame.

Q. Are you the ſame perſon that produced, upon that examination, a paper entitled, La Guillotine, or George's Head in a Baſket?

A. I do not know that it was produced in Court; it was not produced by me.

Q. Are you the ſame perſon that produced that paper at the Privy Council?

A. I produced no ſuch paper at the Privy Council.

Q. Have not you had in your poſſeſſion a paper called La Guillotine, or George's Head in a Baſket, that you got at that Society?

A. I have that paper now.

Q. Have you it about you?

A. I have it not here.

Q. You had it here at the time of the trial I allude to?

A. I had it.

Q. Do you know a perſon of the name of Pearce, who was a member of the Society?

A. Yes.

Q. Have you forgot that Le Maitre, Higgins, and Smith, met at Pearce's, and were reconciled over a bottle of wine?

A. I do not forget it, becauſe the gentleman who aſks the queſtion told it me.

Q. Do you or do you not know, that having had a quarrel they were reconciled, and met at Pearce's upon that reconciliation?

A. I heard that they were reconciled, but I knew the place from the learned Counſel, and from no one elſe.

Q. You

Q. You knew that they were reconciled not from the learned Counſel, you heard the place from the learned Counſel, as I underſtand you?

A. I was informed they were reconciled before you informed me of it.

Lord Chief Juſtice Eyre. Who were reconciled?

A. Le Maitre and Upton.

Mr. Gurney. He only ſays he heard it.

Mr. Attorney General. Do you know Hill, the turner?

A. Yes.

Q. You had a conſiderable ſituation, I underſtand, in the Society you belonged to—you were one of what is called the Committee of Correſpondence?

A. I belonged to the Committee of Correſpondence.

Q. Sometimes, I believe, called the Secret Committee?

A. Once called ſo, in my hearing, by Upton, for which he was very much reprobated.

Q. Hill was a member of the Society, was not he?

A. He was.

Q. Do you recollect going to Hill, after ſome of thoſe perſons had been apprehended?

A. I went to Hill for the purpoſe of gaining all the information that I could reſpecting this buſineſs; I went to other places for the ſame purpoſe, that I might give the Privy Council all the information I could.

Q. You never heard of any quarrel that Upton had with Croſsfield, did you?

A. Never.

Q. Did you hear from Hill any thing about any models that any body had given him orders for?

A. It was in conſequence of Hill having mentioned his uneaſineſs of mind reſpecting ſomething which he had turned that I called upon him; it was not until then that I conceived there could be any thing in the plot.

Q. Did he name to you, or to any body in your hearing, who the perſon was that came to beſpeak the models?

Mr. Gurney. I submit to your Lordship that is not a queſtion to be aſked?

Mr. Attorney General. I will not purſue it then.—Do you know Croſsfield's hand-writing?

A. No.

Q. Did you ever ſee him write?

A. Never.

Mr. James Parkinſon,

Re-examined by *Mr. Gurney.*

Q. You have been aſked reſpecting ſome paper, which it is ſaid you got in the Society—Did you or not get that paper in the Society?

A. I ſwear poſitively I did not.

Mr. Attorney General. Mr. Parkinſon, I muſt beg of you not to go away.

John Bone, (ſworn)

Examined by *Mr. Gurney.*

Q. What are you?

A. A muſlin clearer.

Q. Where do you live?

A. At No. 6, in Weſton-ſtreet, Southwark.

Q. Were you, in the months of Auguſt and September, 1794, a member of the Correſponding Society?

A. Yes, I was.

Q. Were you a member of the General Committee?

A. I was.

Q. Was Mr. Upton a member of that Committee?

A. He was not.

Q. Was Mr. Le Maitre?

A. He was.

Q. Was Mr. Smith a member?

A. Yes.

Q. And Mr. Higgins?

A. He was.

Q. Was Mr. Croſsfield a member?

A. He

A. He was not.

Q. Do you know of any disputes between Upton and Smith, Higgins, or Le Maitre, or either of them?

A. I do.

Q. When did these disputes originate?

A. I cannot be particular as to the time when they took place; it was some time after the commencement of August.

Q. How long did they continue?

A. I never knew that they were healed, because they originated in Upton's bad character; they had a bad opinion of him in consequence of that bad character, which I never knew was taken off.

Q. Can you recollect the days upon which Smith, Higgins, and Le Maitre were taken up?

A. I believe it was on the 25th of September, or somewhere thereabouts.

Mr. Gurney. I dare say the dates will be admitted.

Mr. Attorney General. I rise to state my admission of the times when these persons were apprehended.

Mr. Gurney. Le Maitre and Higgins were apprehended on the evening of the 27th, and Smith on the evening of the 28th. Now, were those imputations respecting Upton's character supported by either Smith, Higgins, or Le Maitre?

A. Yes, they were by Smith and Higgins I know; I never had an opportunity of conversing with Le Maitre, because I only saw him in the General Committee.

Q. Were you at any meeting when Le Maitre and Upton were present?

A. Yes, in the General Committee.

Q. At that time was there any charge brought by Le Maitre against Upton?

A. I do not recollect that there was.

Q. Was there any dispute between them at that time?

A. There was a great dispute.

Q. Was that dispute carried on with a great degree of violence?

A. Yes, on both sides.

Q. Can you recollect the date of that?

A. Yes; it was, I believe, on the 4th of September.

Q. Do you recollect any of Upton's expreſſions reſpecting Mr. Le Maitre at that time?

A. I remember that they quarrelled, that their quarrel roſe to a conſiderable heighth, and they threw the whole aſſembly into a very great degree of agitation, in conſequence of a letter that had been conveyed into the General Committee, caſting a ſtigma upon the Committee and the Society; which letter appeared to have been written by Upton. When the letter was known to be written by Upton, and he confeſſed it, Le Maitre was remarkably ſevere upon him; he called him *the man*, for he conſidered him unworthy the name of *citizen*, and thought he ought to be turned out of the Committee; Upton, in conſequence of this, broke out in a ſtrain of abuſe, and uſed all thoſe epithets which men in the habit of abuſe are accuſtomed to uſe.

Q. Do you recollect any particular expreſſions that he uſed?

A. No.

Q. Were they expreſſions of a violent nature?

A. They were violent.—Upton threatened to be revenged of Le Maitre: Le Maitre ſaid, that if he had any thing to ſettle with him he had better do it at another time than the preſent; and for that purpoſe he wrote his addreſs, and gave it him.

Q. Were you preſent at any quarrel between Higgins and Upton?

A. The ſame evening, in conſequence of Upton's very diſorderly behaviour in the General Committee, a vote of cenſure upon Upton was moved by Higgins in the General Committee: the Committee diſcuſſed the propriety of it; ſome were for paſſing the vote, others againſt it; but the generality of the Committee being of opinion that a vote of cenſure ſhould be paſſed upon him, Upton ſeemed inclined to avoid the diſgrace of a vote of cenſure, by moving towards the door, in order to go away; Higgins then roſe, and ſaid to the chairman—If you are about to paſs a vote of cenſure upon Upton you muſt be quick, for he ſeems to be hopping off. Upton felt himſelf extremely angry, and ſaid—You wretch, that is a reflection upon my

natural

natural infirmity. Higgins replied—If he was to answer him in his own dialect he should tell him he lied, but it should suffice at present to say he did not mean it so.

Q. Upon that occasion, or any other, was there any dispute between Upton and Smith?

A. I do not recollect any dispute between Smith and Upton, but Smith, Higgins, and myself, were members of the Committee of Correspondence, where Upton's bad character was first broached, and Smith and Higgins were very active persons in getting information for the Committee relative to his character upon this occasion; Smith said, that if Upton's name was continued in the printed lists of the Society, his name should not continue in it.

Q. Were you present at any other dispute between Upton and those persons?

A. I do not recollect that I was.

Q. Were you present at any meeting subsequent, when any thing like a reconciliation is supposed to have taken place?

A. Certainly not.

Q. Was this enquiry, by Smith, Higgins, and Le Maitre, concluded at the time of Upton's examination, and of their examination?

A. The business had come to a conclusion, for aught we knew; for we had resolved to publish our lists without the name of Upton being in them.

Q. Then, in point of fact, this enquiry, thus pursued, had not terminated till the night before their apprehension?

Lord Chief Justice Eyre. He mentioned a fact, that the night before they had resolved to publish a list without Upton's name.

Mr. Gurney. Had the enquiry been pursued regularly from its commencement till that time?

Lord Chief Justice Eyre. Ask him what they did respecting it afterwards.

Mr. Gurney. Do you recollect any specific date, subsequent to the 4th of September, when any thing passed between Upton, Smith, Higgins, and Le Maitre?

A. I do not.

Q. But, in point of fact, the enquiry had not terminated till the night before his apprehenſion?

A. It had ſo far terminated that we were ſatisfied about Upton's character.

John Hutley, (ſworn)

Examined by *Mr. Adam*.

Q. What are you?

A. A watch-ſpring maker.

Q. Where do you reſide?

A. In Great Sutton-ſtreet, Clerkenwell.

Q. Did you know Upton, the watch-maker?

A. Yes.

Q. How long have you known him?

A. I had a knowledge of him for about five years.

Q. Did you ſee him about the month of September, 1794?

A. That was about the time.

Q. Do you remember any converſation that paſſed between you and him at that time?

A. I was in company with him and another perſon.

Q. Perhaps you may recollect it better if I tell you that a perſon of the name of Brown was preſent?

A. He was.

Q. What was that converſation about?

A. Concerning the perſons who had been taken up; Le Maitre, Higgins, and Smith.

Q. What paſſed upon that ſubject between you?

A. I walked backward and forward—I looked upon Upton to be a dangerous man, and I did not care to be ſeen with him: I heard him diſcourſing concerning theſe people with Brown; he ſaid it was their own faults, that he ſhould never have troubled his head about it, but they had made very free with his character: I ſaid—Perhaps they may have known as much of you as I have known.

Q. Was any thing more ſaid about theſe people?

A. No.

William

William Brown, (ſworn).

Examined by *Mr. Adam*.

Q. Do you know Upton?

A. Yes.

Q. Do you remember having had any converſation with him in September, 1795?

A. Yes.

Q. What did it relate to?

A. I was aſking him his opinion concerning Croſsfield, what it was that he was detained for; he ſaid—God knows, I cannot tell; he mentioned the place where he was detained, down in the Country, but where I cannot recollect: I aſked him further if he knew what the chief accuſation was againſt him; he ſaid, he did not know.

Q. Had you any converſation with Upton about Le Maitre or Higgins?

A. Yes; I aſked him if he did not know Higgins and Le Maitre; he ſaid, yes, he knew Higgins, Le Maitre, and Smith, they were three damn'd villains, and had uſed him in the moſt villainous manner, and that they were ſtill continuing to hurt his character in every place where he went; that they had attacked him in the ſtreet, by giving him the name of informer, and abuſed him in that manner, and had gathered a great number of people round him; that he thought his life was in danger by them, and if they did not deſiſt he would take ſome other means. I told him he ſhould make an allowance, conſidering the ill-uſage he had given them, by laying an accuſation againſt them apparently unfounded, as the priſoners had been acquitted; he ſaid, I was unacquainted with the former part of the ſtory ſeemingly; and then he told me he would relate the whole to me; he ſaid, "that prior to that, when the ſtate priſoners before were taken up, ſome of their families being in want, the London Correſponding Society choſe to raiſe ſubſcriptions, to give ſome little aſſiſtance to ſome of the families, they thought it convenient to open a public ſubſcription, and that among the reſt of the houſes to be opened for that purpoſe mine was one; that Higgins, Le Maitre,

and Smith came forward, and accuſed me as a thief, and a ſwindler, and an incendiary, and the Society refuſed to give me a fair trial upon it; and they ſtill continue to go on in that abuſive ſtyle in public company." I told him that this accuſation certainly could not ariſe from nothing: he ſaid, "he would tell me what it aroſe from:" he ſaid, "he did once keep a houſe in Cold-bath-fields; that his houſe was burnt, and that he was adverti ſed, and a reward offered for the apprehenſion of him—that he agreed with a friend of his, that provided he would give him a note of hand, payable to him, or to a part of his family, for a part of the reward, he would diſcloſe ſomething which would bring him in ſo much money; accordingly his friend did ſo, and his friend delivered him up to juſtice;" and he appealed to me to know whether there was ground for them to accuſe him in public for ſuch a thing as that, if ſuch a powerful body of men as the Phœnix Office, had entered a proſecution againſt him, and had not been able to prove any thing againſt him, whether he was not acquitted in the eye of the law, and whether any man ought to come forward and publicly accuſe him.—I made a reply, that there was room for ſuſpecting him to be a man of a bad character; and whether he had brought the accuſation againſt Higgins, Le Maitre, and Smith, from a good or a bad motive, that it had done the Society good rather than harm, for the Society had encreaſed in three weeks more than ever it had done before.

Mr. Adam. Have you any thing more to ſay about Upton and Le Maitre?

A. No.

Mr. Attorney General. I have no objection to any of theſe orators; I am ready to admit that Upton is what he ſtated himſelf to be, when he brought forward ſuch a charge in which he was the accomplice; that he was as bad a man as you pleaſe; and I have no objection to your taking his motive to be as malicious as you pleaſe.

Mr.

Mr. John Cleverton, (ſworn)
Examined by *Mr. Adam.*

Q. Were you a priſoner at Breſt, when Mr. Croſsfield was a priſoner there?

A. I was.

Q. Did you live on board the ſame priſon ſhip with him?

A. I did.

Q. For how long a time?

A. From the 19th of February till early in May.

Q. Had you an opportunity of ſeeing much of Mr. Croſsfield during that time?

A. Yes, I was conſtantly with him.

Q. Were you with him at the time he came away?

A. No, I went to the hoſpital ill.

Q. You remained behind when he came away?

A. I was in the ſhip after he left it.

Q. During your intercourſe with Mr. Croſsfield, have you ever heard him make any declarations reſpecting the King?

A. No, I do not recollect any; I have frequently heard him ſing republican ſongs.

Q. Did you ever hear him make any declarations reſpecting any plot?

A. Never.

Q. You lived with him very conſtantly?

A. Yes.

Q. Did you meſs with him?

A. Yes.

Q. Who was at your meſs?

A. Captain Clarke.

Q. He was the Captain of the Pomona?

A. Yes.

Q. Mention the names of any others that you recollect?

A. Captain Bligh.

Q. Is he in England now?

A. I believe he is at Exeter—Mr. Dennis, Mr Denton, the mate of Captain Bligh's ſhip.

Q. Do

Q. Do you know whether he is in England?

A. I believe he is at Exeter.

Q. Who elſe?

A. Mr. Widdiman, the mate of the ſhip I was in.

Q. And you were all at the ſame meſs together?

A. Yes.

Q. Mr. Croſſfield uſed to be very jolly?

A. Yes.

Q. I believe it was a cuſtom there for perſons who were ſick on board the priſon ſhips, to be carried aſhore to the hoſpital?

A. Yes.

Q. Did it require any ſerious illneſs to be carried on ſhore to the hoſpital?

A. No, I had a ſlight illneſs and went to the hoſpital; I was in the hoſpital from the 18th or 19th of May, till ſometime in July.

Q. In conſequence of that you did not come over in the cartel?

A. I came over in the ſame cartel.

Q. Could you have avoided coming over in that cartel?

A. I did not try, I wiſhed to come over.

Q. If you had rather wiſhed to have remained, could not you have remained there?

A. I cannot tell that.

Q. Would not you, upon a repreſentation of a ſlight illneſs, have been carried to the hoſpital?

A. Yes; ſeveral perſons had been carried to the hoſpital, two or three days before we came away, and conſequently did not come over in the cartel.

Q. Did you come in the ſame ſhip with Mr. Croſsfield?

A. I did.

Q. You knew him perfectly well by the name of Croſsfield?

A. Yes; he ſigned his name as a witneſs to ſome papers of mine.

Q. At what time was that?

A. Early in May—a little before I went to the hoſpital.

Q. Was

Q. Was he generally known, in your mefs, by the name of Croſsfield?

A. We always called him Doctor, in the mefs.

Q. But his name was known?

A. Yes, it was to me, becauſe I ſaw him ſign his name.

Q. You called him Doctor, as you would any other medical man?

A. Yes.

Q. Was he the only medical man in your mefs?

A. He was.

Q. How long were you in your paſſage over?

A. Three days.

Q. Were Le Bretton, and Dennis, likewiſe in the cartel?

A. Yes.

Q. Did you ever happen to ſee them and Mr. Croſsfield together?

A. Never particularly engaged in any converſation.

Q. Do you remember ſeeing them particularly together in Breſt harbour?

A. No, not more ſo than others.

Q. Did they live in that ſort of intimacy that you could ſuppoſe Mr. Croſsfield told them any ſecret?

A. They were intimate, Captain Clarke, and Mr. Croſsfield and them, the early part of their time.

Q. How came Dennis and Le Bretton, not to be ſo intimate with them the latter part of the time?

A. I underſtood it was from a watch that Mr. Croſsfield had of Mr. Clarke's, that he would not give up to him.

Q. Did you ever hear any converſation between Le Bretton and Dennis, and Mr. Croſsfield, upon the ſubject of what was in the Pomona, at the time of the capture?

A. No; but I heard Croſsfield ſay, that he would take this watch.

Q. Mr. Croſsfield then continued in your mefs till the very laſt—Did he mefs with you in the cartel as you came over?

A. No.

Q. Were did you land?

A. At

A. At Fowey, in Cornwall.

Q. How did Mr. Croſsfield appear, at the time of coming away from Breſt?

A. He appeared to me to be very glad that he was coming home.

Q. He did not ſhew the leaſt unwillingneſs to return, did he?

A. No.

Q. What is your profeſſion, and ſituation in life?

A. I was going out Agent to the Canaries.

Q. For whom?

A. For a houſe in St. John's-ſtreet.

Q. And you were captured?

A. Yes.

Q. Did Mr. Croſsfield drink hard?

A. Very hard.

Q. You were going out Agent to the Canaries?

A. Yes, I was going out for wines for Government

Mr. John Cleverton,

Croſs-examined by *Mr. Attorney General.*

Q. You ſay Mr. Croſsfield appeared to be very glad when he was coming home?

A. Yes.

Q. Perhaps you might have been by when he ſaid, juſt before he came away, that things had been all ſettled now to his ſatisfaction?

A. I do not recollect that expreſſion.

Q. Were you by when he was muſtered by the name of Wilſon?

A. I was in the ſhip, but I do not recollect his being muſtered by the name of Wilſon; I heard he had put his name down as Wilſon in the liſt, but I never ſaw it.

Q. You frequently heard him ſinging republican ſongs?

A. Yes.

Q. Did that occaſion any quarrels among you?

A. Never.

Q. Do

Q. Do you recollect a ſong, with a chorus that began, Plant, plant the tree?

A. I do.

Q. Be ſo good as read that (*giving a paper to the witneſs,*) and tell me whether you ever heard the priſoner ſing that ſong?

Mr. Adam. Does your Lordſhip think this is evidence?

Lord Chief Juſtice Eyre. I do not know whether this ſong will amount to any thing; he has ſaid he never heard the priſoner ſay any thing about the King.

A. I do not recollect whether that is exactly the ſong he ſung.

Mr. Attorney General. I offer it both to prove the fact; the witneſs has already ſworn of ſinging republican ſongs, and offer the matter of it as part of the priſoner's declaration upon that very ſubject.—Read it through, and tell me whether you have any doubt about it?

A. I have no doubt.

Mr. Attorney General. Then I offer this as evidence.

[*It was read by Mr. Shelton.*]

" See, Britons, ſee, that riſing beam,
" The Eaſtern ſkies adorning;
" Tis freedom's ſun begins to gleam,
" And wakes a glorious morning.

" Now deſpotiſm from France is chas'd,
" And church illuſions vaniſh'd,
" Ne'er let them in our iſle be plac'd,
" But far from Britain baniſh'd.

CHORUS.

" Plant, plant the tree, fair freedom's tree,
" Midſt danger, wounds, and ſlaughter;
" Each patriot's breaſt its ſoil ſhall be,
" And tyrants blood its water.

" They

" They come, they come, see myriads come,
" From Gallia to invade us;
" Seize, seize the pike, beat, beat the drum,
" They come, my friends, to aid us.

" Let trembling despots fly the land,
" To shun impending danger;
" We'll stretch forth a fraternal hand,
" To hail each glorious stranger.

" CHORUS, Plant, plant the tree, &c.

" That palace which for ages past,
" To despots was appointed;
" The sovereign people claim at last,
" For they're the Lord's anointed.

" The useless Crown which long adorn'd,
" The brows of Royal Ninnies;
" To nobler purposes is turn'd,
" Coin'd into useful guineas.

" CHORUS, Plant, plant the tree, &c.

" Those high nicknames Lord, Duke, and Earl,
" Which set the croud a gazing;
" Are priz'd as hogs esteem a pearl,
" Their patents set a blazing.

" No more they vote away our wealth,
" To please a King, or Queen, Sir;
" Now glad to pack away by stealth,
" To 'scape the Guillotine, Sir.

" CHORUS, Plant, plant the tree, &c.

" Our Commons too who say forsooth,
" They represent the nation;
" Must scamper East, West, North, and South,
" To 'scape our indignation.

" Their

" Their Speaker's mace to current coin,
" We preſently ſhall alter;
" And ribbands late ſo gay and fine,
" We'll change for each an halter.

" Chorus, Plant, plant the tree, &c.

" On holy mummeries our boys,
" Contemptuouſly ſhall trample;
" And yonder dome that props the ſkies,
" Shall turn to Reaſon's temple.

" Then ca ira, each corps ſhall ſing,
" To chear the broken hearted;
" And Prieſtcrafts bells no more ſhall ring,
" To thund'ring guns converted.

" Chorus, Plant, plant the tree, &c.

" Behold the Bank its ſpecious traſh,
" Unworthy our regarding;
" Mere paper wealth, ideal caſh,
" Whole pounds not worth a farthing.

" The Stocks like vapours on the hills,
" Shall vaniſh from our ſight, Sir;
" And Abraham Newland's ſwindling bills,
" May cover paper kites, Sir.

" Chorus, Plant, plant the tree, &c.

" Thoſe Lawyers ſee, with face of braſs,
" And wigs replete with learning;
" Whoſe far fetch'd apophthegms ſurpaſs,
" Republicans diſcerning.

" For them to ancient forms be ſtanch,
" To ſuit ſuch worthy fellows;
" Oh, ſpare for them one legal branch,
" I mean, reſerve the gallows.

" Chorus, Plant, plant the tree, &c.

" 'Tis done, the glorious work is done,
" Rejoice with one another;
" To plowſhares beat the ſword and gun,
" For each man is your brother.

" Deteſted war ſhall ever ceaſe,
" In kind fraternization;
" For all is harmony and peace,
" And all the world one nation.

" CHORUS, Plant, plant the tree, &c."

Mr. Attorney General. Was the chorus ſung at the end of each of theſe verſes—Plant, plant the tree, &c.?

A. I do not recollect whether it was or not.

Q. You remember the chorus?

A. I remember the chorus perfectly well.

Q. Perhaps you may have a recollection of ſome other ſongs ſung by the priſoner?

A. I do not immediately recollect any.

Q. Favour me with caſting your eye over that ſong? (*ſhewing the witneſs another paper.*)

A. I do not recollect his ſinging this ſong.

Mr. John Clements,

Re-examined by *Mr. Adam.*

Q. Can you take upon yourſelf, poſitively, to ſwear, that theſe were the words of the firſt ſong that he ſung?

A. No, I cannot; I never heard him ſing it above once or twice, and I paid very little attention to it.

Q. And for ought you know many of the verſes may have been tranſpoſed?

A. They might, but I cannot ſay.

Mr.

Mr. Anthony Collins, (ſworn.)

Examined by *Mr. Adam.*

Q. Were you in the priſon-ſhip, at Breſt, at the time Mr. Croſsfield was there?

A. I was; I commanded one of them.

Q. I underſtand that they were Engliſh ſhips, and they had put Engliſh Captains on board to command?

A. No, we were cartels, we were detained there for a long time; they thought proper to convert the ſhips into priſon-ſhips, and in conſequence of that we were filled full of them.

Q. Was Mr. Croſsfield one of the priſoners on board?

A. He was; I heard there was a medical man on board one of the other ſhips, he was not then on board my ſhip, and I made application to the commandant, and he granted me the liberty to invite him to come on board, to take care of the ſick priſoners, which he did with great care and attention; and I am confident he ſaved fifty or ſixty lives, from his great care and attention, during the time he was on board he lived with me in the cabin, along with ſeveral other gentlemen.

Q. Do you recollect the names of theſe gentlemen?

A. There were two brothers of the name of Byron, there was Captain Lambton, Captain Taylor.

Q. Do you know whether the Byrons are now in England?

A. One of them is now at Portſmouth.

Q. Was he a Captain of a ſhip?

A. No, a paſſenger.

Q. What rank of life is he in?

A. A young man.

Q. And a perſon in the ſame ſtation of life that you yourſelf are?

A. Yes.

Q. Do you know where Mr. Taylor is now?

A. No.

Q. Captain Lambton?

A. He is now at Newcaſtle.

Q. Do you remember any more gentlemen that were on board?

A. Not at that time.

Q. Did you live in great intimacy with Mr. Croſsfield?

A. We did ſo.

Q. You ſay he has a good deal of ſkill in his profeſſion; but independent of that, what ſort of character is he?

A. I did not know the man before.

Q. Did the glaſs go pretty freely round?

A. Our ſituation was ſuch, that for want of better employment it did ſo.

Q. Did Mr. Croſsfield ever ſay any thing to you about any plot he was concerned in?

A. During the time he was in my company, I ſolemnly proteſt, that not a word of the kind was ever mentioned about plots, or any thing againſt his Majeſty or the Government.

Q. Do you know an old man of the name of Winter?

A. I do, he was one of the meſs at that time whenever he choſe to come.

Q. Do you remember any ſtories of Winter's telling?

A. Oh, yes, a number of ſilly fooliſh things he uſed to tell.

Q. Do you recollect any particular ſtory about any animal that he caught?

A. Oh, a number of fooliſh ſtories of that kind, I remember ſeveral, one was of his catching the devil in the ſhape of a hare, and ſuch ridiculous nonſenſe as that.

Q. Did he ſay, that he took this hare for the devil?

A. He certainly did; and was very much diſpleaſed when we contradicted him.

Q. You take upon yourſelf to ſwear, that he uſed to ſay that this hare was the devil?

A. Yes, that he believed it to be ſo; and not only that, but he told another ſtory of the ſame kind——

Q. He was, in ſhort, a man who dealt in the marvelous?

A. He did; and he was the common laughing ſtock of the whole ſhips crew—Indeed, from his own converſation I believed

he was ſomewhat ſlighty at times—I underſtood that he had loſt a good deal of property, whether it was from that, or his impriſonment, or one thing or another, but I really believe at times he was—in ſhort the ſailors laughed at him. I have known him myſelf, walking the deck, and talking to himſelf a whole night, I have got up frequently and ſeen him walking and talking to himſelf the whole night; he was a man that ſlept very little, he was the laſt in bed and the firſt up.

Q. Was not Winter a perſon you uſed to make a ſort of butt of?

A. He was.

Lord Chief Juſtice Eyre. He ſaid he was the common laughing ſtock of the ſhip.

Mr. Adam. Had you any converſation with Winter upon the ſubject of Mr. Croſsfield?

A. No, never any private converſation of any ſort, for he was a man not of the caſt for me to converſe with.

Mr. Anthony Collins,

Croſs-examined by *Mr. Law.*

Q. You was particularly intimate with Croſsfield?

A. Yes, as living with him.

Q. He would probably tell you the reaſon of his leaving England?

A. He never did; only mentioning his pecuniary circumſtances that they were deranged—in ſhort, he had no money, and has aſked me for a little,

Q. He never mentioned a word of what made him leave England rather ſuddenly?

A. Nor that he had left England ſuddenly; only that he was taken in a ſhip going to the South Seas.

Q. As the grog went about pretty freely, I take for granted you had ſongs?

A. We ſung of courſe to paſs the time away.

Q. Were the ſongs orderly, favourable to good Government, or what?

A. I do not recollect any ſongs againſt the Government.

Q. You never happened to hear him ſing a ſong, the chorus of which was

" Plant, plant the tree, fair freedom's tree,
" Midſt danger, wounds, and ſlaughter;
" Each patriot's breaſt, its ſoil ſhall be,
" And tyrants blood its water."

You never heard him ſing ſuch a ſong as that?

A. I do not recollect any thing of the kind.

Q. He was quite another ſort of man?

A. Yes,

Q. Probably his uſual ſong was—God ſave the King?

A. I do not recollect that.

Q. Rule Britannia?

A. That of courſe was ſung.

Q. Have you heard him ſing, Rule Britannia?

A. I cannot ſay I have heard him ſing that, but in the company we have done it.

Q. But you never heard him ſing any ſong of a ſeditious, or bad tendency?

A. I have not.

Q. Nor you never had any communication from him of the reaſon of his leaving England?

A. No.

Q. Did you happen to know by what name he was muſtered, when he came for England?

A. I was informed he had put down a different name.

Q. Did not you think that odd?

A. From his circumſtances being in a bad ſtate in this Country, I ſuppoſed he did not chooſe to be known.

Q. You underſtood it to be to protect himſelf from any enquiries of his creditors; and not to ſcreen himſelf from any enquiries of Government?

A. Yes.

Q. And his behaviour was uniformly that of an orderly and good ſubject?

A. Yes.

A. Yes.

Q. And you was with him every day from April to Auguſt?

A. Yes.

Q. He was rather remarkable for the decency of his conduct, a man you would rather deſcribe as eminent for his loyalty?

A. As to his political principles he never ſaid any thing in that reſpect, except reprobating the war that it was an unjuſt one.

Q. But in other reſpects he was a man of eminent loyalty?

A. Yes.

Mr. Anthony Collins,

Re-examined by *Mr. Adam.*

Q. You ſung ſongs to divert the miſerable time you paſſed in captivity?

A. Yes.

Q. Did Mr. Croſsfield ſeem miſerable as well as the reſt?

A. He did at thoſe times and moments when he was ſerious—I likewiſe have heard him ſay that he had offers from the Commandant to ſtay in the Country to ſuperintend the hoſpital, which he thought proper to refuſe, as wiſhing to return to his own Country—he told me that not only once but ſeveral times, to ſuperintend an hoſpital called Landernau, which he ſaid upon conſideration he refuſed, as he wiſhed to come to his native Country.

Mr. Law. Were you by when he ſaid that every thing was ſettled to his ſatisfaction?

A. He ſpoke French, and of courſe I did not underſtand him.

Q. Did you ever hear him ſay what had been ſettled between him and the people at Breſt, which was ſo much to his ſatisfaction?

A. Nothing at all.

Q. You never heard him ſay any thing had been ſettled to his ſatisfaction?

A. No.

Q. You did not hear what terms were ſettled between them

at the time of his coming away, that induced his coming back to England?

A. No; when the priſoners were to be releaſed he ſeemed to be rejoiced.

Lord Chief Juſtice Eyre. Did you happen to know Mr. Cleverton?

A. I had ſome knowledge of him.

Lord Chief Juſtice Eyre. Was he ever on boardyour ſhip?

A. Not more than once or twice, he did not ſtay on board—he was on board one of the other ſhips—he was I think part of the time at the hoſpital ſick,

Elizabeth Smith, (ſworn)

Examined by *Mr. Adam.*

Q. Are you a married woman?

A. I was; but I have been a widow eight years.

Q. Where do you live?

A. No. 17, Great Hermitage-ſtreet, Wapping.

Q. How long have you lived there?

A. I have lived about eight years in that houſe.

Q. How long did you live in the houſe you were in before?

A. About ſeven years.

Q. Was that in the ſame part of the town?

A. In Red Lion-ſtreet, Wapping.

Q. So that for the laſt fifteen years you have been a conſtant reſident in Wapping, in two houſes?

A. Yes.

Q. Do you know the priſoner Mr. Croſsfield?

A. Yes, I do.

Q. How long have you been acquainted with him?

A. Five years.

Q. Have you ſeen much of him during that time?

A. Yes; he has been very often to and fro to my houſe.

Q. Have you ſeen enough of him to know his diſpoſition of character—Is he a man of levity, or a very ſerious man?

A. He is a man of levity.

Q. Is

Q. Is he a man of a ſevere harſh temper?

A. No; quite the reverſe.

Q. Do you know Captain Clarke who was Captain of the Pomona?

A. Very well, he lodged with me.

Q. How long have you known Captain Clarke?

A. About two years.

Q. Do you know a perſon of the name of Le Bretton?

A. Yes.

Q. How long have you known that perſon?

A. He was before the maſt with Captain Clarke, and ſo he uſed to come to the houſe—Captain Clarke had my firſt floor—Captain Clarke and his wife boarded in my houſe.

Q. Do you remember Mr. Le Bretton coming to your houſe at any time to ſee Captain Clarke, ſince Captain Clarke returned from France?

A. Yes.

Q. About what time was that?

A. I cannot exactly ſay; but I believe about ten days after Captain Clarke left my houſe to go to Yarmouth, coming from the priſon ſhip.

Q. Were you in company with thoſe perſons at that time?

A. Le Bretton called upon me and told me I might expect Captain Clarke that night, for he had been examined at Guild-hall or ſomewhere, and he had wrote for him.

Q. Did Captain Clarke come?

A. He did.

Q. Were you preſent with Captain Clarke and Le Bretton?

A. Yes.

Q. What did he ſay to Captain Clarke—did he aſk him whether he had ever heard this, or no?

A. Le Bretton ſaid he had heard Mr. Croſsfield deſcribe a gun to him in the preſence of Captain Clarke, and he ſaid to Captain Clarke you was preſent at the time—Le Bretton ſaid he had heard Mr. Croſsfield deſcribe it, and that Captain Clarke was preſent at the time—Captain Clarke ſaid he never heard it.

Q. Did any thing elſe paſs upon that ſubject between you?

A. Le

A. Le Bretton ſaid ſeveral times he hoped he would hang him.

Q. You have known Mr. Croſsfield I think you ſay theſe five years—did he ever lodge at your houſe?

A. Yes.

Q. Under what name did he lodge at your houſe?

A. Always under the name of Croſsfield.

Q. At what particular time did he lodge at your houſe?

A. He has lodged at my houſe at three different times.

Q. Name the times, if you recollect them?

A. About three years ago—the laſt time that he lodged at my houſe was about a month before Chriſtmas—it was in the beginning of February when he joined Captain Clarke's ſhip at Portſmouth—he dined on Chriſtmas day 1794 with Captain Clarke at my houſe, that was the day Captain Clarke left my houſe, but Mr. Croſsfield did not join the ſhip at Portſmouth for five weeks after that.

Q. Where was he all that time?

A. In my houſe—he uſed to go to 'Change with Captain White, a gentleman who lodged with me at that time.

Q. Did he uſe to go about with Captain White and other gentlemen?

A. Yes; to the 'Change and different places.

Mr. Attorney General. You ſaw him there?

A. I did not ſee him there, but he uſed to go and return with the gentlemen.

Mr. Adam. He uſed to go about without any concealment?

A. I never knew of any concealment.

Q. Were you preſent when any thing paſſed between him and Captain Clarke reſpecting his going to the South Seas?

A. Mr. Croſsfield came into the houſe one day and Captain Clarke was ſpeaking to a gentleman to recommend him a ſurgeon, Mr. Croſsfield enquired where he was going, and ſaid perhaps he might go with him, that is all that I know.

Q. What is your opinion of Mr. Croſsfield's general character?

A. He is a very good natured man, that I am ſure would hurt nobody.

Q. Did

Q. Did Le Bretton ſay any thing further about Captain Clarke's having heard this matter that paſſed with reſpect to the plot?

A. No.

Q. Did he preſs Captain Clarke upon it?

A. He ſaid two or three times that he was preſent.

Elizabeth Smith,

Croſs-examined by *Mr. Wood.*

Q. Did Mr. Croſsfield lodge at your houſe before he went down to Portſmouth?

A. He lodged at my houſe two months before.

Q. And up to the time when he went down to Portſmouth?

A. Yes; he went ſometime the beginning of February.

Q. You endeavoured to learn from Le Bretton and Dennis what they had ſworn before the Privy Council?

A. No, I never aſked them a queſtion, nor I never heard Dennis ſay any thing, but I heard Le Bretton ſay that to Captain Clarke.

Q. But have not you aſked Le Bretton and Dennis what they had ſworn before the Privy Council?

A. No, I never did; and he won't ſay that I am ſure.

Q. Have not you endeavoured to perſuade Le Bretton to be very favourable to the priſoner?

A. No, never.

Q. You never applied to him for that purpoſe?

A. Never.

Q. Nor never ſaid a word to him upon that ſubject?

A. I never did.

Q. Let me put you in mind—did not you tell him that the truth was not to be ſpoken at all times?

A. I never did.

Q. Remember you are upon your oath?

A. I do, and I am ſpeaking the truth.

Q. And you never ſaid any thing to that effect to him, nor to Dennis?

A. No, to neither of them.

Q. They

Q. They may be called, and I wiſh you would recollect yourſelf?

A. They may, and they will clear me if they are.

Q. Then you ſay you never interfered with them to be favourable to the priſoner, nor ſaid that the truth was not to be ſpoken at all times, nor to that effect?

A. No, never; I had never ſeen them.

Q. You had never ſeen them?

A. Not ſince that time, they were conſtantly about the houſe then, and that was the time to ſpeak of it.

Mr. Adam. I am going to call a witneſs for the purpoſe of proving that Upton is now living.

Lord Chief Juſtice Eyre. We have had ſome evidence with reſpect to Upton—Unleſs you go the length of proving that Upton is alive and is kept away by one ſide or the other, no obſervation in my judgment ariſes upon it in this caſe—it will remain an uncertainty whether he went away to avoid being now examined, and what were his inducements if he did ſo; or whether they were inducements that moved from the ſide of the proſecution, or from the ſide of the priſoner; or whether it was purely the effect of his own feelings—Now all that being left perfectly uncertain, as you do not open that you can prove that he is kept away; it ſeems to me as if that enquiry was really quite beſide this caſe.

Mr. Adam. Will your Lordſhip permit only for the ſake of ſtating the ground———

Lord Chief Juſtice Eyre. If you think it right to call theſe witneſſes, having admitted ſome evidence on the other ſide, which perhaps was rather admitted by way of anticipation than otherwiſe, I certainly ſhall not ſtop you.

Mr. Attorney General. There is one circumſtance material for my learned friends to be aware of, as in the nature of the thing this is evidence reſpecting a fact which has taken place ſince a copy of the indictment, and the names of the Jurors, and of the witneſſes were delivered to the priſoner; this point muſt ariſe, and it is a new point in the hiſtory of theſe ſort of trials, namely, whether I am not at liberty to call witneſſes to prove the death of

Upton,

Upton, which is a fact that has happened ſince the liſt of witneſſes has been delivered to the priſoner—I apprehend I can call theſe witneſſes—I take for granted Mr. Adam will not make an objection.

Lord Chief Juſtice Eyre. Witneſſes whoſe teſtimony ariſes from the evidence on the other ſide, can hardly be ſuppoſed to be within the meaning of the Act of Parliament; becauſe by no poſſibility can you know beforehand that you ſhould need ſuch evidence.

Mr. Adam. I wiſh to ſtate it in ſuch a manner as to have it very diſtinctly underſtood—I am perfectly ſatisfied of this, and I am really anxious, though it may be a little out of courſe to declare that I am perſuaded every perſon concerned in this proſecution throughout the whole, is perfectly incapable of doing ſuch a thing; and I ſhould be extremely ſorry if any thing that I ſtate to the Jury, or now addreſs to your Lordſhip, could poſſibly attach my name to the ſuppoſition of ſuch a thing exiſting, and therefore moſt undoubtedly I cannot avail myſelf of that ground—namely, that I bring this evidence to prove that there have been meaſures taken to prevent Upton's coming here; I certainly cannot ſtate that to be the ground, becauſe every conviction and every feeling that I have, is perfectly to the contrary—then it reduces itſelf exactly to this, whether your Lordſhip thinks ſtrictly ſpeaking it is evidence that ought to be admitted or not, I certainly will not give your Lordſhip the trouble of diſcuſſing the queſtion.

Lord Chief Juſtice Eyre. You do very rightly, becauſe examining witneſſes whoſe evidence has not a clear application to the cauſe only puzzles the caſe.

Mr. Adam. In a caſe of this ſort your Lordſhip will forgive me for offering this evidence.

Lord Chief Juſtice Eyre. I have no objection to every thing being ſtated and ſifted, and giving you all the aſſiſtance I can to enable you to produce every thing you ought to produce.

Mrs.

Elizabeth Watſon, (ſworn)

Examined by *Mr. Adam.*

Q. Where do you live?

A. I did live in Dyer's Buildings.

Q. Did Mr. Croſsfield, the gentleman at the bar, live with you?

A. He lodged in my houſe.

Q. Under what name did he lodge in your houſe?

A. By the name of Croſsfield.

Q. You always knew him by that name?

A. I did.

Q. Did he lodge in your houſe in September and October 1794?

A. He came on the 26th of July 1794, and continued as near as I can remember about two months.

Q. Of courſe you knew a good deal of his manner and way of life—was he a man that was remarkably careful of his papers or any thing?

A. No, he had nothing locked up while he was in my houſe.

Q. Did he paſs by his own name, and go about every where publicly?

A. Yes.

Q. How long have you known him?

A. I never knew any thing of him till he came to lodge in my houſe.

Q. When did he leave your houſe?

A. I cannot aſcertain the day—he came about the end of September, or the beginning of October.

Q. He did not come back again to lodge with you?

A. No.

Elizabeth Watſon,

Croſs-examined by *Mr. Attorney General.*

Q. Did he viſit you afterwards?

A. No; I have never ſeen him ſince he left my houſe.

Q. He

Q. He did not pay you any visit at any time about Christmas, January, or February, or afterwards?

A. He did not.

Q. Do you recollect whether enquiries were made at your house about him?

A. No enquiries were made after him after he left my house.

Margaret Bosley, (sworn)

Examined by *Mr. Adam.*

Q. Do you know Mr. Crosfield?

A. I have known him about four years.

Q. Have you known him intimately?

A. Yes.

Q. What is your opinion of his character?

A. I never knew any thing against his character.

Q. Do you know whether he is a humane good natured man?

A. I have always understood so, and always heard so.

Mr. Wyld, (sworn)

Examined by *Mr. Adam.*

Q. Do you know Mr. Crosfield?

A. Yes.

Q. How long have you known him?

A. About three years.

Q. What is your opinion of his character?

A. I always thought him of a good character.

Q. For his good nature and humanity?

A. Yes; I always thought him a man of humanity.

Q. What is your profession?

A. A surgeon.

Q. Where do you live?

A. In the Kent Road.

Mr. Simon Wilson, (sworn)

Examined by *Mr. Adam.*

Q. What are you?

A. A surveyor in Dorset-street.

Q. Do

Q. Do you know Mr. Croſsfield?

A. Very well.

Q. How long have you known him?

A. Ever ſince I remember any thing.

Q. Do you know him ſufficiently to know his character?

A. Yes.

Q. What is your opinion of his character?

A. I always thought him an exceeding good man.

Q. Incapable of committing any crime?

A. I never thought he would commit the leaſt crime.

Q. He is a humane man?

A. Very much ſo.

Mr. Hepburn, (ſworn)

Examined by *Mr. Adam.*

Q. What are you?

A. A ſurgeon.

Q. Where do you live?

A. In Great Hermitage-ſtreet.

Q. How long have you known Mr. Croſsfield?

A. Four years.

Q. Have you known him intimately?

A. I have been often in his company, I attended the family where he lodged.

Q. What is your opinion of his character?

A. A very eaſy good natured man, extremely ſo; too good natured.

Mr. Law. We will call Dennis and Le Bretton again.

Thomas Dennis, (called again)

Examined by *Mr. Law.*

Q. Were you in Court when Mrs. Smith was examining juſt now?

A. I was not.

Q. You have not heard what ſhe ſaid?

A. No.

Q. You know Mrs. Smith?

A. I

A. I do.

Q. Have you had any converſation with her about Croſsfield?

A. Not ſince I was firſt examined before the Privy Council?

Q. Did ſhe ever make any enquiries of you as to what you had ſaid on your examination?

A. She did.

Q. Are you ſure of that?

A. Yes, I am confident of it.

Q. Did ſhe ſeem in any manner anxious to know what you had ſaid upon that examination?

A. Quite ſo; ſhe aſked me what I knew about Croſsfield, and ſhe ſaid ſhe hoped I would not declare any thing that would hurt him—I dined with her, and very warm diſputes there were after dinner, there were three or four Captains there and myſelf; and ſhe ſaid ſhe would ſay any thing to ſave him, and not to hurt him.

Q. Was there any thing ſaid about whether you ſhould or not ſay truth at all times?

A. Not before me.

Mr. Adam. (to Elizabeth Smith) Is what this man ſays true?

A. I never examined him as to what he had ſaid.

Q. Did you ever aſk him to do what he ſays you aſked him?

A. I never aſked him to favour Mr. Croſsfield.

Dennis. Captain Smith, who dined there, got into a very warm diſpute, and ſaid Mrs. Smith you ought to be aſhamed of yourſelf for ſaying ſuch a word.

Mr. Law. Who is that Captain Smith?

A. A gentleman in the African trade, he lodged with this good lady, at leaſt I learned ſo when I dined there.

Lord Chief Juſtice Eyre. Who were the other gentlemen there at dinner at that time?

A. Captain Clarke, Captain Smith, and a young gentleman that had apartments there, I believe he was a wharfinger; I do not know his name.

Mr. Law. As I find Le Bretton is not here, we will not detain the Court, but with your Lordſhip's leave we will examine him after my learned friend has ſummed up the evidence for the priſoner.

Mr. Gurney.

Gentlemen of the Jury,

The evidence for the prisoner being now closed, it becomes my duty to address you on his behalf; and I need scarcely state to you the extreme awfulness of that duty. Even my learned friend, Mr. Adam, when he rose to address you, felt himself most deeply affected by the circumstance of standing up, for the first time, in defence of a person accused of so great an offence; what then must be my feelings, who am far from having the advantage either of his ability or of his experience? I, however, feel myself encouraged by the consideration, that the able and eloquent speech which he delivered must have made such an impression upon your minds as to render it less necessary for me to solicit your attention, or to detain you, for any length of time; and to make it less likely that the prisoner should suffer, as I fear he must suffer, by the inability of the advocate who has now the honour to address you.

I confess, Gentlemen, there is one burthen, from which in this case I feel relieved, namely, that there is not any question of law by which your minds can by any possibility be entangled. It is purely a question of fact upon which you are to decide; that is to say, whether the fact has been substantiated by legal proof, so as to call upon you to find the prisoner at the bar guilty of High Treason.

Gentlemen, it has been correctly stated to you, that the crime of High Treason is the most heinous and the most atrocious crime which it is in the power of man to commit. It is so inasmuch as it aims not only at human life, but at the life of the Sovereign, whose death might plunge the Country into a state of anarchy and confusion, and consequently bring upon it incalculable miseries. The life of the King being of such high import to Society, the law has provided peculiar protections for his person; it has enacted, that even the *compassing* his death shall be equal to that which in other cases would be the completion of the crime—the

the actual murder. By the act of 25 Edward III. which is the ſtatute upon which this indictment is founded, Treaſon is defined to be—" when a man doth compaſs or imagine the death " of our Lord the King, and thereof be provably attainted of " open deed by people of his condition."

Thus far the law had provided, and wiſely provided, for the protection of the perſon of the King from lawleſs violence; in ſucceeding times the legiſlature was taught, by melancholy experience, that another important conſideration remained, namely, to protect the perſon of the ſubject from unrighteous violence under the forms of law; it therefore provided fences to guard the ſubject from unfounded accuſation of High Treaſon. A ſubſequent ſtatute has enacted, that a perſon ſhall not be convicted of High Treaſon unleſs there are two witneſſes to one overt act, or one witneſs to one overt act and another witneſs to another overt act, of the ſame ſpecies of Treaſon. The reaſon of the law was, that the Legiſlature, in proſecutions for High Treaſon, carried on, as they always are, by the Government of the Country, had witneſſed inſtances in which individuals were overborne by the power and the influence of that Government; it was, therefore, neceſſary that a Jury ſhould have, in a caſe of ſo great magnitude as this, the ſatisfaction ariſing from the concurring teſtimony of two witneſſes to ſome one overt act, or one witneſs to one overt act and another witneſs to another overt act, of the ſame ſpecies of Treaſon.

Before I ſtate to you, Gentlemen, what the queſtion is which you have to conſider, give me leave to ſtate, in one word, what it is you have *not* to conſider. The queſtion is *not* whether there was or was not probable ground for this proſecution. The queſtion is, *whether the Attorney General has ſubſtantiated the charge of High Treaſon, according to the ſtrict requiſites of the law.* This ſtatement of the queſtion you will perceive the neceſſity of keeping in your minds, from ſome obſervations I ſhall have occaſion to make hereafter.

Before I enter upon the examination of the evidence which has been given, I would beg leave to remark on the improbable nature of the caſe attempted to be made out on the part of the

Crown. It is ſurely no immaterial conſideration, whether the charge which is brought againſt the priſoner is attended with probability or with improbability; becauſe, undoubtedly, evidence of a leſs weighty nature will ſubſtantiate a probable charge than will ſubſtantiate an improbable charge. Now, upon viewing the whole of this caſe together, I will venture to ſay, that, from the beginning to the end, it is attended with every improbability that can attend any account, of any human tranſaction, or any pretended human tranſaction. Among other things, let it be conſidered, what motive all theſe perſons could have who, are affirmed in the indictment to be conſpirators. In former aſſaſſination-plots, which have become the ſubject of judicial enquiries, there was in a neighbouring Kingdom a competitor to the throne, ready to aſſert his pretenſions by force of arms; and there were in this Country numerous adherents to the dethroned prince, ready to ſecond and to ſupport his pretenſions; therefore, there was a very obvious purpoſe to be attained by the perſons who were conſpiring to aſſaſſinate the reigning King, namely, to remove him, in order to place the exiled monarch upon the throne.—Happily for this Country, that is no longer the caſe. We have now no diſputed throne, his Majeſty reigns by unqueſtionable right, and reigns, too, in the hearts of his ſubjects.

Gentlemen, there is another obſervation upon the improbability of the charge which may not be unworthy your attention. —It is ſaid this aſſaſſination was to have been effected in the theatre at Covent-garden. Is it at all conceivable that any perſons could perpetrate a crime ſo horrid in that public place without neceſſarily becoming the victims of their own guilt? Is it reaſonable to ſuppoſe, that any perſons could be ſo mad as to imagine that they could perpetrate that crime and eſcape the puniſhment which they ſo well deſerved? It is totally impoſſible they could entertain ſuch a hope. You will, therefore, conſider how ſtrong and powerful a motive ought to be proved upon perſons who are aſſerted to have engaged in a deſign, the execution of which muſt have been attended with the immediate loſs of their own lives.

I will now, Gentlemen, ſubmit ſome obſervations to you upon

upon the evidence; and I feel relieved from a great part of the duty that would otherwiſe have been incumbent upon me, by the obſervations which have been already ſo forcibly made by my learned leader; and, therefore, if in going over the evidence for the Crown I ſhould not ſtate it to you with great particularity, that will be the reaſon; and you will not, therefore, imagine that I have any wiſh to withdraw any part of it from your attention: indeed, if I had any ſuch wiſh, I know it would be vain, becauſe I am to be followed by the learned Attorney General in reply. The learned Judge, too, who preſides, will ſum up all the evidence to you with the greateſt accuracy.

In the firſt place, you have the evidence of Dowding, Flint, and Bland, who ſtate the converſations that paſſed between them and a perſon of the name of Upton, whom you have heard ſo much of, Palmer, whom you have ſeen; and ſome third perſon. Not one of theſe witneſſes, however, has identified the priſoner to be that third perſon. You will obſerve, farther, that, in all theſe converſations, Mr. Upton is ſtated to be the perſon who made the enquiries; Mr. Upton is the perſon who is ſuppoſed to have carried on ſomething like a negociation with each of them; though, in point of fact, nothing was done upon any of theſe enquiries, no inſtrument was made, and, till you come to the evidence of Hill, it is not ſtated that any thing was done in conſequence of theſe enquiries and theſe directions.

You come then to the evidence of Mr. Hill, who ſtates, that three perſons came to him, Upton, Palmer, and a third perſon; which third perſon, he, too, has not identified to be Mr. Croſsfield: that he received inſtructions from Upton; and that that third perſon, whoever he was, he thinks aſſiſted Upton in giving the directions.

Then you have the evidence of Mr. Palmer, which is to connect Mr. Croſsfield with the whole of this tranſaction. Mr. Palmer ſtates, that himſelf, Upton and Mr. Croſsfield, were the perſons who called at theſe braſs-founders, and were the perſons who likewiſe called upon Mr. Hill.

You will recollect, Gentlemen, that Mr. Palmer was a witneſs produced by the Crown; he was a man, therefore, whom

the Crown tendered to you as deſerving of your credit; for if he was not deſerving of your credit, he was not a witneſs to be produced by them in this Court. You will recollect that the identity of Mr. Croſsfield is proved only by Mr. Palmer, and therefore I ſhould ſuppoſe that the Crown will not ſtate to you that Mr. Palmer is not deſerving of your credit, becauſe the moment his credit is deſtroyed this cauſe is out of Court; for they have not proved the identity of Mr. Croſsfield by any perſon but Palmer. Therefore, I am perfectly indifferent as to Palmer's credit; I care not whether he ſtands before you as a man entitled to the fulleſt credit, or as a man totally unworthy of your belief. I am perfectly indifferent upon that ſubject; becauſe if he is deſerving of credit, then the whole of his evidence muſt be taken to be true. And he has ſtated, that the calling upon Upton was accidental; he has ſtated, that he called upon Upton for a watch of his, which Upton was mending; that upon mentioning to Upton which way Mr. Croſsfield and he were going, Upton ſaid he was going the ſame way, and would accompany them; that Upton was the man who ſpoke to every perſon upon whom they called; he has not the leaſt memory of any one part that either of them took in the converſations except Upton; and, therefore, if Palmer is a perſon of credit, then one of thoſe perſons who is ſuppoſed to be a witneſs to prove ſome one of the overt acts charged in the indictment, is a witneſs who does not prove any one of thoſe overt acts.

You recollect how this is ſupported on the other hand by Hill, if it is to be called ſupport. Hill ſtates, that he received inſtructions from Upton; and he thinks that a third perſon, whom he did not know, aſſiſted in giving ſome part of the directions. Is this to be called two witneſſes to an overt act?—Is this that concurring teſtimony of two witneſſes to an overt act which the law requires before a priſoner can be provably attainted of open deed? It certainly is not. One witneſs proves ſomething like a fact, which fact the Crown attempt to colour by ſubſequent evidence, and the other witneſs fixes identity but proves no fact; and if this overt act is not proved, I beg to aſk what overt

act upon this indictment is proved? Not one. This is the only overt act to which the evidence for the Crown can be applied.

The first overt act charged in the indictment is, that the prisoner, together with Le Maitre, Smith, and Higgins, the other persons named in the indictment, conspired to procure and provide a certain instrument, for the purpose of discharging an arrow, and also a certain arrow, to be loaded with poison, with intent to discharge the said arrow, so loaded with poison, by means of the said instrument, at and against the person of the King, and thereby to kill him. Now, you cannot but have observed, that, although this is the main and principal overt act —although it is that which first presents itself to the eye upon reading the indictment, yet the Crown have not affected to give a single tittle of evidence in support of it from the beginning to the end of their case.

Gentlemen, you must have supposed, from hearing the indictment read, that you were to have evidence of a conspiracy of the prisoner with those other persons to procure and to provide this instrument; and yet you have heard no more of those persons upon the evidence for the Crown than if they had never existed from the beginning of time to the present moment. The first overt act, therefore, is not even attempted to be proved by the Crown.

The second is the overt act upon which I have already observed, and to which alone the evidence for the Crown applies; that is, the employing Hill to prepare two pieces of wood, to be used as models for the making certain parts of the instrument before mentioned, and delivering to Hill drawings, as instructions for making such models.

The third overt act charges the prisoner, together with the other three, with deliberating on the killing of the King, by the means and instrument aforesaid, and how and where it might most effectually be accomplished. Of that, too, you have not heard one single syllable in evidence.

The fourth is, employing Upton to assist in making the instrument; and for that purpose delivering to him a paper with draw-

drawings, as inſtructions for making the inſtrument, and alſo two pieces of wood as models for the inſtrument.

Gentlemen, as you have not ſeen Mr. Upton—from what cauſe it is not now my buſineſs to enquire—but as, in point of fact, you have not ſeen Mr. Upton, you have had no evidence given, or affected to be given, either of the priſoner at the bar or of the other perſons who ſtand charged with him in the indictment having employed Upton for that purpoſe, or having delivered to him any drawings for that purpoſe.

There remains, then, only another overt act, which is, delivering to Upton a metal tube, to be uſed by him in the making of the inſtrument, and as a part of the inſtrument.

Now, Gentlemen, what proof have you of that overt act? All the proof you have is, that, in the poſſeſſion of Upton, a metal tube, which has been produced, was found. Unqueſtionably the metal tube was in the poſſeſſion of Upton. But after the evidence you have heard reſpecting Upton—after the evidence, too, which you have not heard reſpecting Upton, I mean, becauſe you have not ſeen or heard Mr. Upton himſelf—is it to be inferred, that, becauſe a metal tube was in his poſſeſſion, that, therefore, the priſoner delivered that metal tube to him to be employed for that purpoſe? I am ſure a preſumption ſo violent, ſo totally unſupported by all the evidence, is not a preſumption that can be ſeriouſly and gravely ſtated to you on the part of the Crown.

There is another ſet of overt acts, which differs from this only in the deſcription of the inſtrument; I ſhall not detain you, therefore, with any obſervations upon them,

I believe it is unneceſſary for me to make more than one or two obſervations further upon that which is the original evidence in ſupport of this indictment. You muſt have anticipated me in obſerving, that it was not ſo very remarkable that Mr. Upton ſhould be going to a braſs-founder's, or that he ſhould be going to a turner's, for the purpoſe of ordering any inſtrument to be conſtructed which was not in his ordinary buſineſs as a watch-maker, becauſe it has been proved that he was, likewiſe, an ingenious mechanic in other branches; that he had

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in his shop an electrical machine of a curious construction, of his own invention, that he was extremely proud of it, and you observe when he was asked by Hill the purpose for which the models were wanted by him, he said they were for the purpose of an electrical apparatus.

Leaving then, Gentlemen, all that evidence which merely states certain circumstances respecting Mr. Crosfield calling with Upton upon Hill, and those circumstances proved, as I submit, only by one witness; because not one of the other witnesses, excepting Palmer, speaks to the identity of Mr. Crosfield; unless there was something more in the case, it would unquestionably be impossible for you to conceive by what means that evidence could be applied to the support of the indictment upon which you have to decide.

But the Crown state that they can give corroborative evidence —evidence of conversations or of confessions of Mr. Crosfield which completely prove the traitorous purpose with which he did those acts. Now, evidence which is corroborative, or in other words evidence which is auxiliary, can only weigh in your minds so much as to produce a conviction, when there has been previously some one overt act established according to the requisites of the Act of Parliament by two witnesses; or two overt acts, one proved by one witness, and another proved by another. The superstructure cannot be raised until the foundation for it is laid.

Gentlemen, of all evidence that is produced in a Court of Justice, evidence of confessions, of conversations, of words, is the most loose and the most suspicious. I am sure the observations which my learned friend made to you upon that subject, and the very respectable authorities which he cited cannot fail to have made the strongest impression upon your mind. In addition to them, I will quote but one authority, and that is Mr. Justice Blackstone, who says, "Words may be spoken "in heat without any intention, or be mistaken, perverted or "misremembered by the hearers. Their meaning depends "always upon their connexion with other words and things. "They may signify differently even according to the tone of

"voice

" voice with which they are delivered; and ſometimes ſilence " itſelf is more expreſſive than any diſcourſe." I will not add one word of my own to this admirable obſervation of that learned, that judicious, and that elegant writer upon the Engliſh law.

Gentlemen, you have the teſtimony of perſons who were on board the priſon-ſhips with Mr. Croſsfield, who come to you to ſtate, that he made certain declarations upon the ſubject-matter of the crime with which he now ſtands charged. Here too the caſe is attended with ſome of the ſtrongeſt improbabilities that can exiſt, and with ſome circumſtances extremely hoſtile to that caſe, which is attempted to be made out by the witneſſes on the part of the Crown.

The firſt witneſs that you heard was Le Bretton, who ſtated himſelf to be boat ſteers-man, which, as I underſtand, is a ſituation of very inferior condition on board a ſhip, certainly ſuch a man is not a ſuitable companion for the Captain and the Officers, or the Surgeon. Le Bretton has ſtated to you the words which Mr. Croſsfield is ſuppoſed to have uttered, and which are conceived to prove the criminal purpoſe with which he did the acts that have been before alluded to. Le Bretton ſays, I have heard him ſay he was one of thoſe that invented the air-gun to aſſaſſinate (which he called *aſſignate*) to ſhoot his Majeſty. I aſked him, what it was like; he told me the arrow was to go through a kind of a tube by the force of inflammable air; he deſcribed the arrow to me like to one of our harpoons.

Now I ſhould have ſuppoſed when the next witneſs Dennis was called, that he was to have proved the ſame declaration as Le Bretton, and moſt undoubtedly it was conceived he would prove the ſame. Dennis was more Le Bretton's aſſociate than any other perſon. He was mate of the ſhip in which Le Bretton was a ſailor, and conſequently he and Le Bretton muſt more frequently have aſſociated, and were more likely than any others to be in company together with Mr. Croſsfield.

Here Gentlemen you have a fact which marks the danger of giving ſo much credit as is ſought to be given to this teſtimony, becauſe you muſt ſee that not two of theſe witneſſes ſpeak to the ſame declaration; Dennis tells you he heard Mr. Croſsfield ſay,

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that his Majesty was to be assassinated at the Play House by a dart blown through a tube, and that he knew how the dart was constructed, it was something of the shape of a harpoon.

Then we come to Mr. Winter, and really after the very acute cross-examination of my friend last night, and after the observations which he made upon his evidence this morning, I am almost ashamed of re-calling your attention to his testimony except to remark that this too conspires, as every thing does conspire, to prove the extreme danger of admitting this sort of evidence as a proof of guilt. What does Mr. Winter say? He says that Mr. Crossfield told him, he actually had shot at his Majesty, but unluckily missed him; he said this was between the Palace and Buckingham House; that this was Crossfield's daily subject of discourse for five months, and that he once dipped his finger into some grog and marked upon the table how the arrows were made. Then there are some other declarations respecting what he hoped would happen in future.

Lastly comes Mr. Penny, and he states, that Mr. Crossfield said he was one of the ringleaders of the three that attempted to blow the dart at his Majesty in Covent Garden Theatre—stating the attempt to have been actually made, of which you have had no proof, and which there is no pretence to say ever had been made—and that if he arrived in England he would do the same again.

Although it does not come exactly in its place, I must remark the extreme absurdity of supposing that a person who is imagined to have confessed to this witness that he had actually committed the crime of High Treason, should say that if he ever came to England again, he would do—what? Not that he would commit any other species of High Treason—not even that he would commit the same species of High Treason in any other way—but that he would commit High Treason again in the particular way in which he is supposed to have committed High Treason before, when all the parties were in custody, when the whole scheme was known to the public, and which, therefore, was the last scheme that ever would have been thought of by any man in his senses, even if he had entertained those detestable designs.

But, Gentlemen, some observations arise upon the manner in which

which theſe witneſſes have given their evidence, and upon the ſort of intimacy which they muſt have had with Mr. Croſsfield. Le Bretton I am ſure muſt have impreſſed you by the manner in which he gave his evidence, with an idea of his not being very favourable to Mr. Croſsfield. Le Bretton ſtates, that in point of fact, Mr. Croſsfield and he did not aſſociate on board the priſon-ſhip; that he was in one meſs, and Mr. Croſsfield in another, as muſt certainly have been the fact, conſidering the diſparity of their conditions. He owns that he diſliked Mr. Croſsfield, and it is extremely fair to ſuppoſe that that diſlike was mutual. Yet it is to be imagined that of all the perſons in that priſon-ſhip, Le Bretton, a man of inferior condition, diſliking him and diſliked by him, was the man whom he ſhould ſelect as his confidant, with whom he ſhould entruſt his life, to whom he ſhould actually confeſs, that he had been guilty of High Treaſon in attempting to kill the King!

Then you come to Dennis; he was the Mate of the ſhip, and he did aſſociate with Mr. Croſsfield, becauſe he was in the ſame meſs; but when I aſked him as to his intimacy with Mr. Croſsfield, he ſaid he never to his knowledge exchanged fifty words with him all the time he was in France, and not many more than fifty before he arrived there. He too appears not to have been very favourably diſpoſed towards Mr. Croſsfield, and I think it may be reaſonably inferred that Mr. Croſsfield was not in habits of the greateſt degree of ſociability and intimacy with him. Yet it is ſuppoſed that Mr. Croſsfield has ſuch a ſtrange taſte for confidants, that he firſt of all ſelects a common ſailor with whom he did not aſſociate, and whom he did not like; and next a Mate whom he diſliked ſo much that, although Mr. Croſsfield is confeſſedly a man of levity, of rattle, and extremely talkative, he did not exchange fifty words with him in a ſix months captivity, during which they meſſed together every day.

Now I appeal to you, Gentlemen, whether it is poſſible to conceive of any evidence more improbable than that which has been given by Le Bretton and Dennis, who ſpeak to declarations which could have been inſpired only by the greateſt intimacy and confidence, and which by their evidence would appear

pear to have exiſted, where there was every thing the moſt remote either from intimacy or confidence?

Mr. Croſsfield was afterwards removed on board another ſhip, and there he finds Mr. Winter. Mr. Winter, you perceive, is a man rather ſtricken in years, and I think even upon his own evidence in chief, he muſt have appeared to you to be a man of as weak an underſtanding as ever made his appearance in a Court of Juſtice. What does he ſtate? He ſtates that Mr. Croſsfield ſaid, that he actually had committed the crime, not that he had conſpired to commit it, not that he was concerned with others in any plot to commit the crime; but that he had actually committed an overt act of High Treaſon in ſhooting at the King. That is not either of the overt acts charged upon this indictment. The Crown did not think proper to ſtate that as an overt act, becauſe unqueſtionably it never did exiſt.

But what ſhall we ſay to Winter, when it appears upon his croſs-examination, that from his ſillineſs and credulity, he was the butt, the ridicule of every perſon in the ſhip, and that they were perpetually telling fooliſh ſtories to him in reply to his very very fooliſh ſtories to them? A more ſtriking inſtance of the complete credulity of the human mind, of a mind which muſt be as near dotage as it is poſſible for any mind to be, (if it is not abſolutely in a ſtate of dotage,) is the ſtory he told laſt night reſpecting the hare which he ſays jumped into his arms, which hare he threw into a kennel of hounds, and there that hare remained, like Daniel in the lion's den, unhurt for ſeveral hours. Is it poſſible to liſten to any thing that a man ſays, whoſe mind can be ſo extremely weak as to allow of his telling that as a fact, which no man living could believe if it were ſtated by a thouſand witneſſes—that a hare could be thrown into a kennel of hounds, and that the dogs, after permitting it to remain among them unhurt for many hours, ſhould then take it into their heads to chace it. Winter was aſked a queſtion which naturally aroſe from that—Whether he had not repreſented this hare to be the devil in the ſhape of a hare? No, he is poſitive he never ſaid that. I think the probability of the caſe would have been, even,

if we had had no evidence to prove the fact, that where a man was ſo weak as to believe it poſſible for a hare to remain unhurt in a kennel of dogs for ſeveral hours, he would be ſuperſtitious enough to ſuppoſe the hare was ſomething ſupernatural. But it does not reſt upon that which is the probability of the caſe; becauſe we have it from the evidence of Captain Collins, that he did ſtate this hare to be the devil in the ſhape of a hare; and therefore what Winter ſtates of his not having ſaid ſo, is completely and abſolutely falſe.

Then, Gentlemen, we come to the evidence of Penny, and his evidence of declaration varies as I have before obſerved from all the declarations affected to be proved by the other witneſſes. He ſtates the act too to have been really done, which this indictment charges Mr. Croſsfield with having conſpired to do—he ſays Mr. Croſsfield told him, he was one of the ring-leaders of the three that attempted to blow a dart at his Majeſty at Covent Garden, and he would do the like again if he had an opportunity.

Something is to be gathered, as I before obſerved, from the demeanour of witneſſes. You may collect ſomething of the truth of their evidence from the circumſtances of their appearing to come well or ill diſpoſed to the perſon againſt whom they ſpeak. And I think I may appeal to you reſpecting the demeanour of Penny, that he did not come with any very favourable or even with an impartial diſpoſition towards Mr. Croſsfield. After I had croſs-examined him, and not at any great length, he brought out with great eagerneſs, "He ſaid all this and *more*"—He was aſked directly what this *more* was. It did not appear to be coming very quickly, and therefore I ſat down to wait for it. After ſome pauſe, his Lordſhip aſked what it was? No anſwer—Another pauſe—His Lordſhip aſked him, if he heard his queſtion—"Yes"—but ſtill no anſwer. Again and again was his Lordſhip obliged to remind him that he was waiting for an anſwer—and then what was this more? Nothing additional could he venture to ſtate—but he then ſays, your Lordſhip has got this down, and that down, and the other, repeating every thing he had ſaid before, in the very ſame words he had befor uſed, and in the

ſame

same order, but not pretending that he had any thing new to state, though he had before said he had something more to state; and the whole of his behaviour created a suspicion, that he was endeavouring to invent something to extricate himself from the difficulty in which his zeal had involved him.

Gentlemen, I have observed upon the variances in the accounts given by these witnesses, of the declarations of Mr. Crosfield; and that naturally introduces the observation which I am now to submit to you, that inasmuch as I have before, I think, demonstrated, that you have not had any overt act proved by two witnesses, as the statute requires—so, on the other hand, you have not any confession of an overt act proved by two witnesses; because Le Bretton is the only man who has stated to you, that Mr. Crosfield confessed to him he was one of those that invented the air-gun to shoot his Majesty. Therefore, to fortify that which, I think, is not established sufficiently to be fortified, you have merely the single evidence of Le Bretton, as to the confessions of Mr. Crosfield. But this you will recollect, is not a confession of any one of the overt acts proved, or attempted to be proved. You have no overt act proved of a conspiracy for the purpose of killing his Majesty. There has not been a single tittle of evidence produced by the Crown to establish that charge of conspiracy, and yet every one of these supposed confessions of Mr. Crosfield, relate to some supposed conspiracy, of which the Crown has not been able to produce a single tittle of evidence. Therefore you will consider how remote all these conversations of Mr. Crosfield are from proving, that he confessed to these witnesses that he was guilty of any one of the overt acts which is charged upon this record, I mean of any one of these overt acts upon which the Crown have offered any evidence to your consideration.

Gentlemen, this being the evidence on the part of the Crown, the Attorney General said, that he thought it would behove the prisoner to give some account of the instrument in question, and of the design with which it was made, and this he considered to be a necessary part of our defence.

Gentlemen, the Crown is to make out its case by its own strength,

ſtrength, not by the weakneſs of a priſoner. A priſoner has a right to ſtand upon the defenſive, and to ſay, I do not come here to prove my innocence, it is for you to prove my guilt—and evidence to prove that guilt muſt be produced before he can be called upon to make any defence at all. But even when a priſoner is called upon to give ſome evidence in his defence, the nature of that evidence muſt depend upon the nature of the caſe, which is attempted to be made out againſt him, and he is not to be called upon to give evidence, which in the nature of things it is not in his power to give.

Admitting the whole of the evidence that has been given on the part of the Crown to be true, and drawing from it every inference that the Crown would wiſh to draw, the knowledge of the exiſtence of theſe models is only proved to have been in the priſoner, in Palmer, in Upton, and in Hill. Hill you have ſeen, Palmer you have ſeen, Upton you have not ſeen—and, therefore, I ſhould be glad to know what witneſs I am to produce upon the ſubject.—Am I to produce Mr. Upton? The Crown ſtate that he is dead, and, therefore, they cannot call upon us to produce him. I beg to aſk then, how Mr. Croſsfield is to be called upon to give any account of the nature of this inſtrument, when it is not pretended that there is any other living witneſs that ever ſaw it.

But recollect, Gentlemen, what it is that Mr. Croſsfield is ſuppoſed to have ſeen. It is not affected to be ſaid he ever ſaw any part of the inſtrument. For you will recollect, that in the converſation at Hill's, at which Palmer ſtates Mr. Croſsfield to be preſent, Upton was giving inſtructions for making the model, Palmer never ſaw that model, and Hill is the only witneſs produced who ever ſaw it, excepting afterwards in the poſſeſſion of Upton, when Mr. Ward ſaw it.

With reſpect to the metal tube, that which is infinitely the moſt formidable part of the inſtrument, that too which might perhaps readily explain the meaning of all the reſt, that without which all the reſt is unintelligible (for I defy you to collect from the reſt any ſuppoſition that any perſon, unleſs he were ſkilful in that line, could conclude that it was for an air-gun)

that

that metal tube is not proved to have been in the poſſeſſion of any perſon but Upton, Mr. Croſsfield never ſaw it, never heard of it till afterwards; and, therefore, what evidence can he give of its purpoſe and intent? You will not forget, Gentlemen, that I am ſtating this hypothetically, giving the caſe for the Crown all the weight which can be affected to be given to it by themſelves, and not allowing, becauſe it is not proved, that Mr. Croſsfield had the leaſt knowledge that the wooden model was for the purpoſe of an air-gun, or that he had any thing to do with ordering it, further than poſſibly giving Upton a little aſſiſtance in explaining his directions.

It was in the power of the Crown, if the fact had exiſted, to have proved that Mr. Croſsfield knew ſomething more of the inſtrument, becauſe they have called Mrs. Upton, who ſtates that ſhe had ſeen Mr. Croſsfield at her huſband's houſe; but ſhe does not venture to ſtate that when Mr. Croſsfield was at the houſe, he ſaw either the drawing, the models, or the braſs tube; and you will recollect, (for it is a thing never to be forgotten in the courſe of this cauſe) that that braſs tube is only ſpoken to, as having been in the poſſeſſion of Upton, and that there is not one ſingle tittle of evidence that any one perſon, excepting thoſe who have been produced to you, ever ſaw it, and theſe perſons only in the poſſeſſion of Upton. Palmer never ſaw it, Hill never ſaw it, no perſon ever did ſee it, except Puſey and Steers, and afterwards Mr. Ward, when Upton diſcloſed this ſuppoſed plot to him.

With reſpect to the evidence we have produced, you will obſerve, that we have produced evidence not immediately reſpecting Mr. Croſsfield perſonally, but which will in ſome meaſure account to you for the charge which Upton brought againſt Le Maitre, Smith, and Higgins, who were the perſons firſt apprehended. We have proved moſt indiſputably, that thoſe perſons were purſuing an enquiry againſt him in the Correſponding Society, for a charge of a moſt atrocious nature; that they were purſuing it with ſome degree of violence, and that he was reſiſting it with every poſſible degree of violence and rancour.

We have likewiſe proved to you declarations, that but for their expoſing him he never would have made that charge againſt them.

Now let us look at this indictment; what does this indictment import? To be a charge upon the priſoner and Smith, Higgins, and Le Maitre, of a conſpiracy to kill the King, and Upton is ſuppoſed to be the inſtrument. The Attorney General ſtated in his opening, that Upton, if he had come into Court, muſt have come here to ſtate himſelf an accomplice in the crime of High Treaſon, and that he was one of the principal conſpirators.

Do I not then eſtabliſh ſtill further the extreme improbability of this charge as it ſtands upon the indictment, that Upton ſhould have been ſuppoſed to have been in actual conſpiracy with men, who at that very time were purſuing an enquiry againſt him in the Correſponding Society, were endeavouring to procure his expulſion from that Society on account of the infamy of his character, and reſpecting whom he made declarations which manifeſt his enmity and rancour? Is it to be ſuppoſed that perſons enter into conſpiracies for crimes with thoſe with whom they are on terms of hoſtility? The ſuppoſition is moſt wild and extravagant.

You will alſo recollect the evidence of Mr. Palmer, as to the degree of acquaintance which Mr. Croſsfield had with Upton, that the acquaintance was of very ſhort duration, that it commenced with meeting in the Correſponding Society, and that the call upon the occaſion, which is the ſubject of the evidence, was purely accidental. Why, Gentlemen, good men do not aſſociate for good purpoſes without knowing ſomething of each other, without having ſome general knowledge of the character which each of them bears. Bad men do not conſpire to commit crimes without that degree of intimacy, friendſhip, and confidence, which ſhall enable each to believe that when he truſts his character or his life in the power of the other, he truſts it in the power of a man who will not betray him. A man ſurely will not offer to engage with another in a conſpiracy, to commit the greateſt and moſt atrocious crime that can poſſibly be committed, without a conſiderable degree of knowledge of him, and confidence

confidence in him; because for aught he knows, the moment after he has disclosed his purpose to him, that man would go, as it was his duty, and inform the Secretary of State of the transaction, and in an hour's time, he might find himself a prisoner in the Tower for High Treason. Here is then another of the strong improbabilities with which the whole of the case of the Crown is encompassed. It is supposed that Mr. Crossfield entered into a traitorous conspiracy with Upton, upon a short acquaintance, upon little knowledge, and therefore when he was not in a situation to bestow upon him that confidence which was absolutely necessary, to the guilty transaction imputed to him by this indictment.

But it is supposed that Mr. Crossfield must be a guilty man, because after Le Maitre, Smith, and Higgins, were apprehended, he left London with Mr. Palmer, and went to Bristol. If Mr. Crossfield was one of the persons charged in this conspiracy by Upton, why was he not apprehended at the time Smith, Higgins, and Le Maitre were apprehended? It is not affected to be said, that Mr. Crossfield had left London, till after, not only Upton was apprehended, and had given his information, but Smith, Higgins, and Le Maitre were apprehended. You will observe that the information was given by Upton to Mr. Ward, on the 12th of September. You will observe, too, (referring to another transaction) that there was a very violent quarrel between him and Le Maitre and Higgins, on the 4th, only eight days preceding. On the 16th of that month Mr. Ward had an interview with Mr. Pitt, and informed him fully of all the charge as it had been made by Upton: eleven days more passed and then Upton was apprehended. He made a full disclosure of this supposed conspiracy; and on the night of the 27th, Le Maitre and Higgins were apprehended; on the 28th, Smith was apprehended, and they were all taken before the Privy Council.

Now I beg to ask, when, for the first time, was it that Mr. Crossfield was supposed to have had a share in this conspiracy? If he was supposed to have had a share in the conspiracy at this time, most unquestionably Mr. Crossfield would have been ap-

prehended when the others were apprehended. He was not then apprehended, although his reſidence was perfectly well known; but it was not till afterwards, and long long afterwards that Mr. Croſsfield was the ſubject of any charge. If Mr. Croſsfield had then been the ſubject of any charge, and if the Crown could not readily have found him, there is an expedient to which they always do reſort and afterwards did reſort, namely, a proclamation, with a reward for his apprehenſion. The proclamation offering a reward of two hundred pounds for the apprehenſion of Mr. Croſsfield, I have no doubt, Mr. Attorney General will admit was not iſſued till the 27th of February, 1795.

Mr. Attorney General. I admit that the proclamation was not iſſued earlier than my learned friend has ſtated.

Mr. Gurney. It is candidly admitted by the Attorney General, that the proclamation offering two hundred pounds reward for the apprehenſion of Mr. Croſsfield, was never iſſued till the 27th of February, 1795, near five months after the charge was brought againſt the others and they were apprehended; therefore, I aſk again, when was it that he was for the firſt time charged with this conſpiracy? That he was not charged with it at the time the others were is plain, becauſe he would have been apprehended with them; that he was not charged with it till long afterwards is plain, becauſe it was not till long after that the Crown reſorted to, that which is their never failing expedient, publiſhing a proclamation offering a reward for his apprehenſion.

Palmer has proved that Mr. Croſsfield's journey to Briſtol was not then for the firſt time propoſed, that he had for ſome months had an intention of going to Briſtol, for the purpoſe of trying experiments upon the waters, and ſeeing whether it was an eligible ſituation to ſettle in. But putting it for a moment upon the ſuppoſition that Mr. Croſsfield had retired to Briſtol, upon the account of this charge, I do proteſt againſt its being conſidered as evidence of guilt, that a man has not ſtrength of nerves to meet a charge of High Treaſon, more eſpecially if you recur to the time when this tranſaction took place.

My

My learned friend has ſtated that juſt previous to this, there had been two convictions for High Treaſon in Scotland, that a Special Commiſſion had iſſued for the trial of perſons then in the Tower, accuſed of High Treaſon in England. There was at that time a proſecution coming forward for High Treaſon, I will venture to ſay the moſt tremendous in the hiſtory of this Country; a proſecution not merely ſupported by the uſual power, wealth, and influence of the Crown, but in which the whole legiſlature had combined to proſecute; where, as was moſt forcibly ſaid by one of the great advocates for the priſoners, the two Houſes of Parliament had made up the briefs of the Counſel for the Crown; where, above all, there was a prejudice upon the ſubject ſo deeply rooted, and ſo widely ſpread, that it was ſcarcely poſſible to find a man who was not tainted and corrupted with it. I have too the evidence of that which is notorious to all mankind, that ſome of the perſons accuſed of that Treaſon, whom I have a right to call innocent perſons, did not ſurrender to take their trials upon that indictment. One of the gentlemen charged who was at large, Mr. Holcroft, did ſurrender immediately; Wardle, Hodgſon, and Moore, never did ſurrender to take their trials, and the proſecution afterwards ceaſed without their coming into Court. Therefore it is not to be preſumed that a man's retiring from a charge of High Treaſon, or not putting himſelf forward to meet it at ſo critical a time as that, when this tranſaction took place, furniſhes concluſive evidence of a conſciouſneſs of guilt in his mind. This I ſay upon the ſuppoſition of your not giving full credit to Palmer. But, Gentlemen, Mr. Croſsfield is ſtated to have returned from Briſtol, in the month of December, and here we have accounted for him completely, by the evidence of Mrs. Smith, becauſe we have ſhewn that he lodged at her houſe, and did not leave her lodging to go on board the Pomona, till the latter end of January. Then he comes on board the Pomona, and you have the evidence of thoſe perſons, who have been called on the part of the Crown, to prove his declarations.

Gentlemen, there is one obſervation I omitted to make, and it is ſcarcely neceſſary for me to recur to it, becauſe it was

forcibly impreſſed upon you by my learned friend, on the evidence of a *fact* in contradiction to ſome of thoſe *declarations* the witneſſes have ſpoken to.

Mr. Croſsfield is ſuppoſed to have ſaid, that he was rejoiced at going on board a French ſhip, for he would rather go to France, than return to England. And yet he was a man ſo ſtrangely formed as to be averſe to happineſs when it was in his power to procure it, for he moſt readily entered into a conſpiracy to riſe upon the French, to ſeize upon their ſhip and return to England. Gentlemen, evidence of a fact like that, where he was riſking his own life in a very unequal conteſt, for the purpoſe of reſcuing the ſhip, is enough to ſet at nought a thouſand ſuch declarations as thoſe which have been ſpoken to of his joy at eſcaping from England, and a proſpect of getting into France.

Then, Gentlemen, we have called to your perſons who were confined on board the priſon ſhip with Mr. Croſsfield. And here I muſt not fail to obſerve on the deficiency of the caſe proved on the part of the Crown. The witneſſes who have been called have ſtated the names of a number of perſons, who were in the daily and hourly habit of aſſociating with Mr. Croſsfield—they have ſtated, that they gave thoſe names to the Privy Council, or at leaſt to ſome of the Agents of the Crown; and, therefore, the Crown had it in their power to have procured the attendance of them all, becauſe they all of them came home in the cartel with Mr. Croſsfield. You will recollect that Mr. Croſsfield and thoſe perſons came over in the cartel the latter end of Auguſt, or the beginning of September, and this indictment never was preferred till the month of January. Mr. Croſsfield was all that time a cloſe priſoner in the Tower, having no intercourſe with his friends, and conſequently very little, or indeed, not at all able to make any preparation for his defence. It was in the power of the Crown to have given you the ſatisfaction of hearing the teſtimony of all thoſe perſons, with whom he was in habits of real intimacy and friendſhip, to whom, therefore, if he had made any ſuch declarations as theſe, he would have been moſt likely to have made them.

Upon

Upon this part of the caſe we have produced ſome evidence, but here, too, we could only give you ſuch evidence as it was in our power to produce; and ſurely we have a right to infer, that if all the perſons had been called who were conſtantly in Mr. Croſsfield's company on board the priſon-ſhips, they would not have confirmed the evidence which has been given on the part of the Crown, otherwiſe you would undoubtedly have heard them.

Above all, the moſt material witneſs is Captain Clarke, who engaged Mr. Croſsfield as his ſurgeon—Captain Clarke, with whom he conſtantly lived—Captain Clarke, who, you will not forget, had ſome converſation with Le Bretton upon this ſubject; for Le Bretton ſtated that he had ſome converſation with him, that he had informed the Crown of Captain Clarke, that Captain Clarke had undergone ſome ſort of examination, and that he had ſeen him at the office of Mr. White, the Solicitor for the Treaſury. Why is not Captain Clarke brought here? It is ſaid he left this Country about Chriſtmas laſt. The Crown knew the caſe which they had to prove againſt Mr. Croſsfield, and undoubtedly it was in their power to have detained Captain Clarke in this Country to have given his evidence, if his evidence would have tended in the leaſt to ſupport this proſecution.

Gentlemen, WE have done all that is in our power to do; we have, with great anxiety and with great diligence, ſought thoſe witneſſes who were in the company of Mr. Croſsfield at this time; and we have brought to you, firſt, Mr. Cleverton, who was taken in another ſhip a few days after the capture of the Pomona; and he has ſtated to you, that he was in the habit of aſſociating with Mr. Croſsfield conſtantly—that he meſſed at the ſame table with him—and that he never heard him make any declaration of diſaffection to the King, or any confeſſion of ever having engaged in any treaſonable conſpiracy. If Mr. Croſsfield had been in the habit of doing this (which it is the object of the witneſſes on the part of the Crown to prove), it is utterly impoſſible but Mr. Cleverton muſt have heard it. If Mr. Croſsfield could make confidants of perſons with whom he aſſociated but little, and with whom he was not upon any friendly

terms, ſurely he would not have been more reſerved to thoſe perſons with whom he aſſociated much, and with whom he was upon friendly terms.

Mr. Cleverton is aſked whether he heard Mr. Croſsfield ſing a republican ſong.—Yes, he heard him ſing a republican ſong: the ſong is produced, and it is read to you. In the firſt place, the ſinging a ſong (which, by-the-bye, Mr. Cleverton ſays he never heard him ſing more than once or twice) I take to be no ſort of adoption of the principles which the ſong contains, even if the man who ſings it is ſober; but you will not forget that, in order to drown the ſorrows of their captivity, they all indulged themſelves pretty freely in the uſe of grog, and Mr. Croſsfield eſpecially, for he is ſtated to have been at that time in the habit of conſtant intoxication, which muſt weaken, if not completely deſtroy, the effect of all the declarations that have been ſpoken to on the part of the Crown. But how does it deſtroy all the effect which is ſought to be given to ſinging a ſong—ſinging a ſong, too, after ſupper, by a perſon in the habit of intoxication, juſt at the very time when that intoxication muſt neceſſarily have exiſted? But if Mr. Croſsfield was ſo incautious as to make declarations of this ſort to Dennis and Le Bretton, and ſo incautious as to ſing a ſong of this deſcription before Mr. Cleverton, would he have been more cautious upon the ſubject of theſe declarations in the preſence of Mr. Cleverton? Would not Mr. Cleverton, or the other perſons with whom he was in the habit of aſſociating, be the perſons to whom he would have made this ſort of declarations?—and would not Mr. Cleverton, therefore, have proved that he heard them?

Another circumſtance ſpoken to by Mr. Cleverton was this, that any of the priſoners upon ſlight illneſs, and almoſt upon the pretence of an illneſs, might have gone to Landerneau hoſpital; that ſeveral perſons went upon ſlight illneſs there, ſhortly before the ſailing of the cartel, and in conſequence of that they did not ſail in the cartel for England. Therefore, if the Crown wiſhed to eſtabliſh, that which I think has been before diſproved, that Mr. Croſsfield had an anxious wiſh to avoid England, and

to reſide in France; ſurely this is weighty evidence to prove that Mr. Croſsfield might have avoided returning to England, and that he might have remained in France if he had choſen to remain there.

Then, Gentlemen, you have the evidence of Captain Collins, who was on board the ſame ſhip with Winter; and he ſtates, that he invited Mr. Croſsfield on board his ſhip for the purpoſe of his medical ſkill, to be applied to the priſoners who were ſick; that that medical ſkill was applied conſtantly, and with great effect; and that by means of his ſkill and humanity the lives of fifty or ſixty of the Engliſh priſoners were ſaved. He has alſo ſtated, that which is moſt material for your conſideration, as reſpecting Winter, that Winter was a ſilly old man, telling fooliſh ſtories, and among others telling that ſtory of the hare, upon which I have before obſerved; and that they uſed to tell fooliſh ſtories, too, for the purpoſe of making a joke of him. He ſays, Winter was their common laughing-ſtock; and I am ſure it is impoſſible for your minds to have reſiſted the impreſſion, that Winter was the conſtant butt of their ridicule, and that in truth it was ſcarcely poſſible that any of them could have ſaid a ſerious word to him.

Captain Collins likewiſe proves another circumſtance, that there was an offer—and an advantageous offer, made to Mr. Croſsfield, if he would remain in France, namely, that he ſhould have the ſuperintendance of the hoſpital at Landerneau; yet ſuch was Mr. Croſsfield's reluctance to ſtaying in France, and deſire to return to England, that he refuſed that advantageous offer; and the reaſon he aſſigned was, that he wiſhed to return to his native Country.

But then we have a circumſtance preſented to us, on the part of the Crown, which is ſuppoſed to be a moſt formidable circumſtance; and you are to imagine, that although Mr. Croſsfield was now about to return (unwillingly, as the Crown pretend—willingly and rejoicingly, as we have proved) to his native Country, that he was extremely afraid of having it known that he was ſo returning, and therefore he aſſumed the name of Wilſon.

Now,

Now, Gentlemen, you cannot but have obſerved how completely the evidence for the Crown falls ſhort of affording the inference which they wiſh to draw from it. Mr. Croſsfield is ſtated to have himſelf inſerted his name in the muſter-roll as Henry Wilſon, and that he was taken on board the Hope. To whom was that muſter-roll to be returned?—to the Commiſſary at Breſt. Was it to be ſent to this Country? It is not pretended that it was.

Then you will recollect the evidence of Colmer, one of the conſtables of Fowey, who ſtated, that when he enquired for him on board the ſhip he immediately anſwered to the name of Croſsfield. It is not affected to be ſtated, that he then made any ſort of pretence that his name was Wilſon. Therefore, I have the fact moſt completely with me, that, as far as regarded this Country (reſpecting which, and reſpecting which alone, he could have had any wiſh to conceal his name), he did not endeavour to conceal his name, but anſwered directly to the name of Croſsfield.

But here is another of the improbabilities with which this caſe is attended. Is it to be ſuppoſed, if Mr. Croſsfield wiſhed to come into this Country, concealing his name, that he could have done it, conſidering the company in which he came—in a cartel, with a vaſt number of priſoners with whom he had reſided many months in France, and reſided with them under the name of Croſsfield? He came with ſome of thoſe perſons with whom he certainly was not upon very good terms, as is clearly proved by the demeanour of thoſe witneſſes, and by the expreſs declarations of diſlike which they have made in Court. Is it to be imagined, therefore, that if he was afraid of being apprehended for High Treaſon upon his return into this Country, he would be ſo complete an idiot as to raiſe additional ſuſpicions to thoſe which they had before conceived?—that he was a perſon obnoxious to the Government of this Country, and therefore could not venture to return to this Country under his own name?

But I will ſuppoſe that a copy of this muſter-roll was to be ſent to this Country; then recollect another fact, which ſhews how completely the probability is with me in the reaſon why

Mr. Crofsfield ſhould inſert the name of Wilſon in the muſter-roll at Breſt—Palmer has ſtated, that at the time when he laſt ſaw Mr. Crofsfield, all his property had been aſſigned over for the benefit of his creditors, and that he was then in debt. You know perfectly well, that the names of priſoners coming over in cartels are commonly inſerted in the Engliſh newſpapers; and, therefore, if the name of Crofsfield had been inſerted in the Engliſh newſpapers, as returning on board a cartel from France, that was certainly likely to bring upon him ſome troubleſome creditor, and he might have loſt that liberty to which he had been ſo very lately reſtored. Then I put it to you, whether, taking theſe facts together, it is not infinitely more probable that the fear of creditors induced Mr. Crofsfield to take the name of Wilſon at that moment, than that which the Crown ſuggeſt—the fear of being apprehended for High Treaſon. The reaſon I aſſign is ſtill further enforced by this conſideration, that he is ſuppoſed to have made declarations of his having been actually guilty of High Treaſon to thoſe perſons with whom he came over, and who conſequently muſt have had their ſuſpicions ſtill more excited by his changing his name.

Gentlemen, I have now taken ſuch a brief and imperfect view of the caſe as I have felt myſelf able to take, certainly not in the manner in which I could have wiſhed to have done it, becauſe I could have wiſhed to have diſcharged my duty to the priſoner with infinitely more effect than I have powers to diſcharge it; but I truſt that the obſervations which I have made to you will not be totally without their effect; and I have the leſs anxiety, becauſe I am ſure the opening of the priſoner's caſe by my learned friend, Mr. Adam, cannot have failed to have produced the ſtrongeſt conviction in your minds; and I ſhould have been extremely reluctant to have gone over all the ground which was ſo ably trod by him, becauſe I ſhould have riſked weakening the impreſſion which I am ſure his addreſs to you muſt have made.

Give me leave, then, Gentlemen, in a ſingle word, to recal your attention to the nature of the proof which has been given by the Crown in ſupport of this indictment.

There

There must be two witneſſes to an overt act, or one witneſs to one overt act and another to another. It appears to me, that the evidence for the Crown can be ſuppoſed to apply to only one of the overt acts in the indictment.—To that one, I contend, they have not produced two witneſſes; becauſe one witneſs only ſpeaks to the identity, and another ſpeaks to the tranſaction; and that witneſs who ſpeaks to the identity, abſolutely excludes all idea of any criminal concern in the tranſaction; and, indeed, he who does not ſpeak to the identity, does not impute to the perſon who is ſuppoſed to be the priſoner any criminal concern in the tranſaction.

This being the caſe, I contend, that the defect is not to be cured, and cannot be cured by any auxiliary evidence whatever —that the only witneſs who has attempted to prove a confeſſion of an overt act is Le Bretton, and that the overt act which Mr. Croſsfield is ſuppoſed to have confeſſed to Le Bretton, is not one of thoſe overt acts upon which the Crown have offered any evidence.

Therefore, Gentlemen, the queſtion is, whether the priſoner ſtands in that condition that he is to be conſidered as provably attainted of open deed of compaſſing and imagining the death of the King, according to all the ſtrict requiſites which the wiſdom of the law of England has provided. I ſubmit to you, that the Crown have completely failed in eſtabliſhing that proof, and that therefore he is entitled to your acquittal.

Gentlemen, you cannot but feel impreſſed upon your minds on the one hand, the importance of this caſe to the public, and on the other, the deep and the laſt importance it is of to the priſoner at the bar. If the priſoner is guilty, and is proved to be ſo by evidence which at once ſatisfies the requirements of the law, and completely convinces your minds, unqueſtionably it imports the public, that by your verdict he ſhould be pronounced to be guilty. But unleſs the Crown have given that proof which does amount to that complete demonſtration which the law of England requires, ſure I am you will not pronounce the verdict which muſt ſhed that man's blood—that verdict which if pronounced, in a few days the awful ſentence of the law muſt be

executed

executed upon him. He muſt be hanged by the neck, but not until he is dead, he muſt be cut down being yet alive, he muſt be embowelled, and diſmembered. So awful and ſo dreadful a ſentence will awaken in your minds all the caution you can poſſibly apply to this caſe, and weighing it with that caution which I am ſure you will apply to it, I truſt you will pronounce a verdict of NOT GUILTY.

Lord Chief Juſtice Eyre. Mr. Croſsfield you have been heard in your defence by your Counſel, you have alſo a right to be heard in your own perſon, if you think fit to offer any thing to the Jury.

Priſoner. My Lord and Gentlemen of the Jury, I have nothing to add to what has been already ſtated by my Counſel, except, that however occaſionally I may have appeared imprudent in words or in actions, I am totally incapable of the atrocious crime laid to my charge; further I ſay not, but reſt my caſe ſatisfied with my own innocence and the juſtice of an Engliſh Jury.

Mr. Attorney General. As I find Le Bretton is now come, we will with your Lordſhip's permiſſion aſk him a queſtion or two.

John Le Bretton, (called again)

Examined by *Mr. Law.*

Q. Do you know Mrs. Smith, No. 17, Great Hermitage-ſtreet?

A. By ſight.

Q. Where Croſsfield lodged?

A. I do not know that he lodged there.

Q. Do you remember having any converſation with her, in which ſhe made any enquiries about your examination before the Privy Council?

A. Yes;

A. Yes; I remember she asked me two or three times what I had said.

Q. Are you sure that the conversation began by her asking you, or your voluntarily telling her?

A. By her asking me.

Q. You are sure of that?

A. I am certain of it.

Q. Do you remember her saying any thing particular respecting the evidence you might be called upon to give in this place against any person. Was any thing said about the manner in which that evidence should be given, favourably or otherwise?

A. Before I was subpœnaed she said she hoped I would not say any thing to hurt the prisoner.

Q. Did you say any thing in answer to that?

A. I told her I should speak the truth if I was called upon; I did not know whether it would hurt him or not.

Q. Was that the whole of what you said?

A. I believe that is as near as I can recollect; that I would speak the truth.

Q. Did she make any observation upon that?

A. Yes; she said "truth is not always to be spoken you "know."

Q. Are you sure she said so?

A. Most certainly I am.

Q. And that she began the enquiry of her own accord, as to the examination before the Privy Council?

A. Yes.

Lord Chief Justice Eyre. Mr. Gurney do you wish to make any observations upon this evidence?

Mr. Gurney. No, my Lord—I do not think any observation necessary.

REPLY.

REPLY.

Mr. Attorney General.

Gentlemen of the Jury,

When I riſe to addreſs you in this ſtage of the buſineſs, which you are met to determine upon, I can aſſure you that there is no man that feels more than I do, an awful ſenſe of the importance of the duty which you have to execute.

Gentlemen, you will permit me to ſay further, that if there is a circumſtance to which, at this moment, when I am riſing with a full conviction in my own mind that I am entitled to aſk at your hands, upon the evidence which you have heard, a verdict of guilty, I ſay if there be a circumſtance, to which I can look with ſatisfaction at this moment, or to which I can hope to look with ſatisfaction at any future period of my life, it is this—that the Conſtitution of my Country, in the adminiſtration of its juſtice, protects thoſe, whom it is my duty to proſecute, againſt any error which I may fall into, either in matter of law, or with reſpect to the concluſion that ought, as to fact, to be drawn from the evidence, by interpoſing, between my obſervations and the fate of the priſoner, the advice of the wiſdom that preſides here, and the conſcientious diſcharge of your duty as a Jury, which I am ſure the Country and the priſoner will receive at your hands.

Gentlemen, I know too well the operations of my own mind, guarding it as much as I can againſt falſe impreſſions, not to feel that I am unable ſufficiently to protect my judgment againſt the tendency which a proſecutor's view of the caſe has to miſlead it. When I call therefore upon you, on behalf of the Country, for a verdict of guilty, it is, and ever will be to me, a moſt laſting ſatisfaction, that, between the judgment that I form, and the fate of that individual, you are firſt to receive the advice and direction of thoſe whoſe duty it is, according to the Conſtitution, to adviſe and direct you; and you

you are then to determine whether this priſoner is or is not guilty of this charge.

Gentlemen, I agree to every obſervation which has been ſtated to you, with reſpect to the importance of this caſe: but this is not a caſe important only on one ſide. Gentlemen, the fate of Mr. Croſsfield, who ſtands now before you upon his deliverance, is the fate of a perſon whoſe life is undoubtedly precious in the eye of the law, whoſe life ought to be precious to your conſciences, becauſe it is precious in the view of that God who made you and him. You will however recollect alſo, that you owe a duty to the Country, by a verdict according to evidence, to give protection, according to law, to the life of the Sovereign, whoſe life, I may venture to ſtate, is at leaſt as dear to the law of England, as that of any man who is his ſubject. The ſubject and the Sovereign are entitled to receive from you the protection of the law: if in this caſe a verdict of not guilty be due to the perſon who ſtands before you, God forbid that any conſideration of the importance of the life of the Sovereign ſhould induce you to deal out the leaſt injuſtice to the unfortunate priſoner, who now ſtands at your bar. But a juſt verdict the Country hath a right to receive at your hands.

Gentlemen, with reſpect to the law of this caſe, it appears to me that this caſe has no difficulty, in matter of law, in it. This is not a caſe of ſuch Treaſon as is ſometimes repreſented as conſtructive Treaſon, and by a variety of other names, which occur in the books, and in the hiſtory of legal proceedings in this Country. But it is a caſe in which no queſtion of difficulty, with reſpect to the law, can be ſtated to a Jury of the Country; it is the ſimple caſe of a direct attack againſt the life of that perſon; to compaſs or imagine whoſe death, when a meaſure is taken for that purpoſe (whether the meaſure is effectual, or not effectual for the purpoſe), is Treaſon under the expreſs letter of the law. The queſtions therefore, which you have to try, I apprehend are theſe: Did the priſoner do any ſuch act as any of thoſe which are charged in this indictment? Did he do any ſuch act with

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the intent charged by this indictment? Is it proved that he did such act with such intent by competent and sufficient legal evidence? And this last question, I apprehend, I may state to you as including the sense of the statute of Edward III. when it speaks of the person indicted "being provably attainted of "open deed, by people of his own condition." That the fact was done, you must be satisfied before you can convict; that the fact was done with the intent charged by the indictment, you must also be satisfied: if your minds are satisfied on these points, it only remains for you to consider, under the advice which you will receive in matter of law, whether the fact is proved, and the intent is proved, according to the rules of that law, the benefit and protection of which you are bound to dispense to this prisoner.

Gentlemen of the Jury, this case has been very ably stated to you on the part of the prisoner; that statement has consisted partly of general observations upon a general view of the case, and partly of particular remarks upon the particular expressions, and the particular contents, and import of the evidence, which has been given by each and every of the witnesses.

Gentlemen, you will give me leave to do now, what I attempted to do in the outset, to lay out of the case entirely the fact that there ever did exist such a person as the man whose name you have so often heard, I mean Upton.

Gentlemen, I opened this case to you by stating, as strongly as I could, that if he was here to give his evidence, it must have been most anxiously watched: it appeared to me, at least, that when a man came, charging himself, out of his own mouth, with an offence the most heinous that can be stated, not merely in a political view, but in a moral view—for this is not a mere political offence, as affecting the King as King, but looking at it with a view to the character of those who admit themselves to be guilty of it, it is as enormous a moral offence as it can enter into the heart of man to endeavour to perpetrate—when such a man came to give evidence, his testimony must be heard with great jealousy. When the witness must have been bound to admit in his testimony that he

had, to a certain extent, embarked in a project to murder an individual in the Country, I am ſure, Gentlemen, I ſhall not withdraw from what I have before ſtated in the outſet, that if you could not find, in the reſt of the evidence laid before you, ſufficient reaſon to affect the life of a third perſon, I ſhould never have aſked you for a verdict againſt the life of a man upon any credit you could give to ſuch a witneſs alone.

Gentlemen, I lay out of the caſe alſo all the evidence, which has been offered to you on the part of the defendant with reſpect to the malice, with which this man, Upton, has been ſuppoſed to act. In the firſt place, with regard to the preſent priſoner, ſift the evidence from the beginning to the end of it (I beſeech you to do ſo with reſpect to every particular, in the whole of the evidence, where your minds feel a leaning in favour of the priſoner), I think I may ſtate to you that there is not a ſingle tittle in it that amounts even to evidence, deſerving the name of ſuggeſtion, or even of inſinuation, that Upton ever had any malice whatever againſt Croſsfield, the priſoner. With reſpect to the other perſons, whom he accuſed, I mean Smith, Le Maitre, and Higgins, it is extremely obvious upon the evidence, for God forbid I ſhould ſeek to conceal from you any fact that does appear the fair reſult of the evidence, that between him and ſome of thoſe perſons, if not all of them, there had been a quarrel, which, if you pleaſe to take it, had led to great rancour, and great malice upon his part. One of the witneſſes has told you, that with reſpect to Le Maitre, at leaſt, a reconciliation had taken place. I think I might aſk you, ſuppoſing this was a queſtion between, not the preſent priſoner and Upton, but between Le Maitre, Higgins, and Smith, and Upton, if he had been examined as a witneſs, whether any thing at all concluſive is proved, after it is eſtabliſhed that a man brings forward a charge, actuated by a purpoſe of malice in ſo doing? That you are bound as men of conſcience to ſift a charge, ſo brought forward, to the bottom; that you are bound to ſee that the malice of the man's mind does not miſlead him in point of veracity; that you are bound to ſuſpect that it may miſlead him in point of veracity;

that

that you are bound to be jealous, left that malice may create in his mind the prejudices that may lead him to go beyond the truth, when he is charging the perſon accuſed, is that, which it is not only my duty to admit, but it would be my duty, in a caſe which called for it, to preſs moſt ſtrongly in favour of the priſoner upon your attention. But, on the other hand, I ſhould neither be ſpeaking the language of the law of England, nor the language of common ſenſe, if I ſhould ſay that in every caſe in which a man brings forward a charge, becauſe he has malice in his mind, the charge is falſe; that it is therefore falſe, becauſe the perſon who makes it is malicious. The malice may be his reaſon for bringing forward the charge, but it will always be a queſtion for a Jury to determine whether, ſuppoſing the malice to be the motive for his bringing forward the charge, there is or is not evidence of the truth of that charge, which malice leads him to bring forward. Now I beg your attention to the evidence itſelf, as to this matter: throughout all that has been ſtated, on the part of the priſoner, with reſpect to Upton's malice, if it even applied to Mr. Croſsfield, which there is no pretence in the world to ſay that it does, there is not the leaſt admiſſion in all the language, which Upton holds upon the ſubject, that the charge which he had made was not true. He has ſtated a reaſon, and a very bad reaſon, undoubtedly, for bringing forward that charge of guilt, in which he himſelf participated, but he has never ſtated to any of the witneſſes produced, any thing like an admiſſion that the charge itſelf was not true. The amount of all he ſaid is this: it is true that I have brought forward this charge. I inſiſt upon the truth of the charge. I implicate myſelf in the guilt. I do not pretend to ſay there was innocence any where. I aſſert that there was guilt every where. It may be true that I have a malicious motive for bringing it forward. But, Gentlemen, be that as it may, and whether he was or was not reconciled to Le Maitre, whether he was or was not reconciled to Smith and Higgins, whether he was or was not unfriendly to them, or any of them, at the time he brought forward the charge againſt all the four, there is

not one ſingle tittle of evidence, not one from the beginning of this cauſe to the end of it, which even imputes to him—nay, the tendency of the queſtions put by my learned friends, in their examinations and croſs-examinations, does not impute to him that he had any malice againſt the priſoner, againſt this individual, upon whoſe fate you are now to decide. But, Gentlemen, ſuppoſe you take him to be as wicked and as malicious as they repreſented him to be, what has that fact to do with this caſe? Have I laid before you one ſingle word of evidence, as to that man's declarations, made before any Magiſtrate? Before any Magiſtrate in the Privy Council? Before the Privy Council? Or made any where? Have I not put the caſe to you, deſiring that all that could have been ſtated ſhould be forgotten—that it ſhould be forgotten wholly, if a ſingle ſyllable of it has found its way into the evidence? I have endeavoured not to bring before you, leaſt it ſhould endanger your conſciences, one ſingle word of declarations made by that man, Upton. I have proved, indeed, ſome particular facts, with reſpect to certain things which were in his poſſeſſion; with reference to which facts I ſhall have to trouble you with ſome obſervations preſently; but all teſtimony as to his declarations you may utterly diſregard; and when you come to determine between your Country and the priſoner, you will be ſo good as to decide this caſe, aſſuming as a fact that Upton never in his life knew any thing relative to the tranſaction, except what is proved to have paſſed in the preſence of the priſoner; and that he never uttered one word about this matter, except what he is proved to have uttered in that preſence. Gentlemen, I am content to go further, for I can agree that, as to Upton, you ſhould not only believe that he has ſaid nothing more; but ſuch is the nature of the proof in this caſe, that you ſhould even act upon the ſuppoſition that if he had been here preſent, in order to be examined, he might have ſpoken favourably for the priſoner. I have no objection to your taking it even in that point of view. The proof is ſuch, that even then the reſult of it cannot be miſunderſtood. The caſe comes to this. Is there, upon the evidence, inde-

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pendent of all the tranſactions, in which Upton may or may not have had a concern, ſufficient teſtimony to eſtabliſh that the perſon at the bar did conſpire, either with Le Maitre, Smith, and Higgins, or with any other perſons, for the purpoſes mentioned in the indictment? Or is there upon the evidence, independently of all ſuch tranſactions, ſufficient teſtimony to eſtabliſh that he, if not in conſpiracy with them or others, did any ſuch acts, as can be conſidered as charged againſt him alone in the indictment, for ſuch purpoſes? My Lord, I hope, will go along with me, by and by, in what I am about to ſtate to you; or, on the other hand, I truſt he will do that, which I am ſure I need not entreat him to do, and which I ſhall be moſt thankful to him for doing, he will correct my view of the ſubject. I ſay, did the priſoner conſpire with the perſons named, or with any other perſons? If Smith, Le Maitre, and Higgins are as innocent in fact, as I am bound at this moment to ſuppoſe that they are; yet, if this priſoner conſpired with Upton, Palmer, or any other perſons, as is charged in the firſt overt act laid in the indictment, and if the conſpiracy was with the intent charged in the indictment; and if there is legal evidence both of the fact of the conſpiracy, and of the intent with which the conſpiracy is charged to have been entered into, then the priſoner muſt be found guilty. I ſay, moreover, that, putting all conſpiracy out of the caſe, and ſuppoſing that no man living, except the preſent priſoner, can be charged with any guilt, yet if this priſoner did that, which is ſtated as the ſecond overt act, or if he did any ſuch acts as are ſtated in the record, where the purpoſe of putting the poiſon in the arrow is left out; if he employed Hill, for inſtance, as to the drawings or model of the inſtrument, whether in concert, or not in concert with other perſons, who did or did not know his intent, if ſuch circumſtances be proved ſufficiently, though againſt him ſingly, and his acts are proved to have been done with the intent charged in the indictment, and proved by legal evidence; I ſay, moreover, that then alſo you are bound, ſpeaking always under the correction of my Lord, to find the priſoner guilty,

I agree that, if neither the facts of the conſpiracy, nor his own acts, as charged in the record, are made out, or if they are not made out as connected with the intent charged in the indictment, or if made out with the intent charged in the indictment, they are not eſtabliſhed by legal formal teſtimony, you cannot convict the priſoner. There may be very great inconvenience, perhaps, in the ſtate of the law, with reſpect to proceedings in caſes of this kind; but God Almighty forbid that I ſhould aſk you, or that you ſhould treat me otherwiſe than with ſome degree of indignation, if I did aſk you to find any man guilty upon any other ſtate of the law than ſuch as it is, when you are ſworn to decide upon the facts according to it.

Gentlemen of the Jury, the firſt queſtion put to you by the priſoner's Counſel, by way of general obſervation, is this: it is ſaid, with what motive could the priſoner poſſibly do theſe things? Why, how is it poſſible for men in Courts of Juſtice, adminiſtering the law, to anſwer that queſtion better than by referring to the motive, to which the law aſcribes ſuch facts? If you ſhould be ſatisfied, in the reſult, that theſe things were meant, the concluſion of law upon the caſe is, and it muſt be the concluſion of fact, that the motive was that which the law calls a malicious one. Gentlemen, the purpoſe (and this does not depend upon the evidence of the ſailors from Breſt), the purpoſe was at leaſt a ſecret one. Why was it a ſecret purpoſe? You will recollect that the firſt witneſs, Dowding, ſpeaks to you with regard to the application made to him by Upton, and alſo the priſoner Croſsfield, for it was proved afterwards by Mr. Palmer that Croſsfield was the perſon who went to Dowding, with Upton and with himſelf; that he tells you that he enquired for what purpoſe the tube was wanted; and that the anſwer was, that, with reſpect to the purpoſe, it was a ſecret. I repeat to you, Gentlemen, what I obſerved in opening the proſecution, and I ſubmit to your candour that the obſervation is fair, that when you ſee an inſtrument framed, ſuch as that which has been deſcribed, calculated to be uſed for ſuch dangerous purpoſes, as Mr. Mortimer proved upon his oath laſt night

that

that it was capable of being applied to; when you see that a feathered arrow was intended to be fabricated, capable of being used for the most mischievous purposes; and when you see, beyond all question, that the prisoner at the bar is implicated in the fact of being concerned in the framing and fabrication of these things; and when you hear, besides the testimony of four persons, if I am to reckon Mr. Winter as one, with respect to whom I shall say a word to you presently, or the testimony of three persons, against whose integrity, against the purity of whose motives there has not been even a suspicion intimated in this Court; when you hear from them for what purpose of mischief these things were stated out of the mouth of the prisoner himself to have been framed and fabricated, I repeat to you that, in such circumstances, some attempt ought to be made on the part of the prisoner; and none has been made to satisfy your consciences what was really the purpose intended by those who fabricated these things, if the purpose intended was not, in truth, that which is charged upon this record, and that which the prisoner has fifty times over, if you give credit to Mr. Winter, avowed it to be.

Gentlemen of the Jury, you have heard observations upon the state of the times, when this accusation was brought forward. You have heard that the times had a tendency to encourage plots. You have heard of the trials for High Treason. You have been put in mind of the event of those trials for High Treason. The Juries of the Country administered the justice of the Country; and of the administration of the justice of the Country, I am not the individual who means to say otherwise than that it is well administered. I know that the Constitution of this Country, the life of the Sovereign, every blessing which we can enjoy in the Country, is finally to find its security in the verdicts of Juries. But how do any observations upon those trials, either with respect to the magnitude of them, or the nature of them, or the event of them, or upon any transactions respecting them, apply to this sort of case? Gentlemen; did those trials induce Upton to stand forward to charge these people with a plot? Be it so. But do

you think that thoſe trials, or the tranſactions that had relation to them, induced all theſe braſs founders to conſpire? That they induced theſe ſailors, when at Breſt, to conſpire? And that, in order to help out Upton's ſtory, repreſented to have been made for his own ſafety (though I do not ſee how that could have been ſo effectually put in danger, as by his own relation of his own guilt), all theſe braſs founders and ſailors have been induced, by the ſtate of the times, to give the evidence which you have heard? Surely there are, in this caſe, circumſtances of the moſt ſingular kind that ever happened, if Upton coined the whole of this plot. There are no leſs than four braſs founders in England who relate that, in fact, application was made to them for the purpoſe of fabricating ſuch an inſtrument, as he ſays was intended to be framed. There are, then, very ſingular circumſtances in the conduct of the priſoner. You find the priſoner abſconding as if he was guilty. You find the priſoner avowing the plot which Upton was bringing forward; declaring his guilt; making declarations reſpecting the purpoſe of the fabrication of this inſtrument, and the nature of the inſtrument, ſuch as you have heard; and you find three or four witneſſes coming along with that priſoner from a diſtant country, unimpeached, and unimpeachable in character, ſwearing before you, and before God, to his declarations of his guilt, as declarations ſo ſeriouſly made as to impreſs them in the manner they have mentioned. Can all this originate from the times, and the State Trials?

Another circumſtance has been ſtated, of improbability ariſing from the nature of the place where this plot was to be executed; I mean Covent Garden Theatre: the Theatre has been mentioned, as you recollect, by two or three of the witneſſes who came from Breſt. Why, Gentlemen, God be thanked, it is perhaps the beſt ſecurity we all have againſt the wickedneſs of men, who are diſpoſed to act wickedly towards us, that ſuch purpoſes of the heart are not always conducted under the influence of the wiſeſt heads; but I ſee no improbability in this. I know, from the hiſtory of tranſactions in this Country, that in open day light, that in the open ſtreets of this

town,

town, through a very conſiderable part of this town, the perſon of the Sovereign may be attacked, and yet that it is impoſſible to find out the individual who is guilty of the outrage. With reſpect to the place, therefore, it appears to me to be a place as well adapted for ſuch a purpoſe, conſidering how Mr. Mortimer ſtates that it could be executed, as any other place. But whether the place was well or judiciouſly choſen or not for the purpoſe, I am perſuaded my Lord will tell you, if a ſtep was taken for the fabrication of this inſtrument, that that ſtep, though an injudicious one, is a ſufficient overt act, if it be ſufficiently proved to manifeſt that compaſſing and imagination, which makes the crime within the ſtatute.

Another obſervation was ſtated to you, that you had here a ſtrange ſet of conſpirators, ignorant of the nature of air-guns. If they were ignorant of the nature of air-guns, they took ſome pains to inform themſelves of the nature of air-guns, and to remove that ignorance. They applied to Cuthbert, who, you recollect, informed you that an air-gun had been ſhewn to two perſons that came to him; but Mr. Mortimer muſt have ſatisfied you, if that fact, which Cuthbert depoſed to, was a fact which ſhewed the ignorance of the perſons concerned; that, at leaſt, they had become ſo wiſe in this profeſſion of making air-guns before the model was finally delivered to Hill, that though Mr. Mortimer tells you it is not very ſkilfully done, yet, he ſays, that from that model he ſhould collect that an air-gun was intended to be made; that though it is not the handy work of a ſkilful artiſt, it is a ſufficient paper to enable a perſon, underſtanding the ſubject, to fabricate an air-gun; and with verbal information, Mr. Mortimer ſays, even that part of the wooden model, which has been produced to you, might be adapted to the fabrication of this dangerous inſtrument.

Gentlemen, it has further been ſtated to you, by way of a general obſervation, that Croſsfield and Upton's acquaintance had been very ſhort. Now that tends a little againſt a former ſuggeſtion, that he could have malice againſt Mr. Croſsfield. No circumſtance has even been hinted at that could, in that

ſhort

ſhort acquaintance, infuſe into his mind any malice againſt the preſent priſoner. Short however as their acquaintance was, they had become exceſſively intimate; for it does not depend only upon this fact, viz. that Mrs. Upton has ſworn that ſhe has often ſeen them together, but it is clear that, ſhort as their acquaintance was, they were intimate enough together to ſet about the fabrication of an inſtrument, capable at leaſt of being applied to purpoſes of extreme danger. Their acquaintance was long enough (that is out of all queſtion) to lead them together from Upton's ſhop to one braſs founders in the city; to lead them together to another braſs founders; and from him again to a third; from him to a fourth; and from him to Hill, and there to deliver to that perſon the paper, which will be exhibited to you, and which I have now in my hand, which contains the drawing of the wooden part of this inſtrument. I think you will ſee clearly that their acquaintance had been long enough, and ſufficiently intimate to introduce them to ſo much of connexion with each other, as to induce Mr Croſsfield to become a party to the fabrication, or at leaſt to the drawing the model of this inſtrument, containing the repreſentation of the figure of that arrow, which might be replete with poiſon, as Mr. Mortimer tells you, and, at all events, was replete with infinite danger.

Gentlemen of the Jury, another obſervation has been made, which is this: that there was no proclamation for Mr. Croſsfield till the month of February. Be it ſo. In the firſt place, you will recollect that Mr. Palmer, who was called to you, and I ſay no more of him than that he was an unwilling witneſs; that Mr. Palmer informed you that he had undertaken to procure his attendance; and it is not immaterial that he had undertaken to procure his attendance too, according to his evidence, as a witneſs. Moreover, I apprehend that any man, who underſtands a ſubject of this kind, will go along with me in believing that a proclamation with a reward, is that which is full as likely to ſend the perſon deſcribed in it out of the Country, as to procure his attendance in it; and whilſt Palmer's engagement to procure the attendance of Mr. Croſs-

field

field stood good, till there was no hope that that attendance would be procured according to that promise: I must take leave to state that it would have been a very imprudent measure to have issued such a proclamation. But if this be otherwise—how can such a circumstance blow out of Court the effect of all the rest of the evidence, which has been given you in this case? And with respect to fact, if there would be any justice in the observation which I have been making upon general principles, does not the conduct of Mr. Crosfield, when this proclamation is issued, most distinctly and clearly prove that it was not a measure calculated to procure his attendance? The prisoner, you have seen, left London, and went to Bristol, when this matter was first brought forward by Upton. It is stated by Palmer, that he went there for the purpose of considering whether he should not establish himself there in the medical line: he intimates that that was his purpose. Now you will permit me to submit to your judgment this observation; that it is impossible but that the prisoner, before he went there, must have known that Upton had made a charge against Smith, Le Maitre, and Higgins: that fact, beyond a doubt, he must know. Then either he knew Smith, Le Maitre, and Higgins to be innocent, or he knew nothing of the matter, with respect to them, and he did or did not know himself to be innocent. If he was himself innocent, you will be pleased to recollect that it is proved, beyond contradiction, that he had taken this part at least with Upton, namely, to go to all the brass-founders, and to proceed to the extent in the fabrication of this instrument; to which it is proved he did proceed, by being a party to these drawings, from which Hill fabricated the wooden models. He was certainly then a person who could give information upon this subject. It was absolutely due to Smith, Le Maitre, and Higgins, that Crosfield, if he knew as much of this matter, as it is proved beyond a question that he did know; and if he knew that the transactions, up to this period, had been connected with no manner of guilt, it was his duty to them to have come forward, and to have stated the transactions as they were, and to have

aſſiſted in clearing theſe men, who have been repreſented this day as innocent. If he was innocent himſelf, he came forward without any danger. If he was guilty, or if there were circumſtances that would implicate him in a ſtrong ſuſpicion of guilt, he might have a reaſon for not appearing at the Privy Council as a witneſs. He goes however to Briſtol upon the errand which has been mentioned. The names of any perſons whom he ſaw there are not mentioned in evidence: his making any enquiry, in reference to the purpoſe for which he went there, has not been given in evidence. He comes up to town: he does not go to his lodgings in Dyer's Buildings: he does not even call there, during the whole time he is in town: he goes to a lodging in Wapping, a ſingular removal for a medical man who meant to ſettle at Briſtol, according to Palmer's evidence. The evidence of Palmer, who had been with him at Briſtol, who ſtates his privity to his purpoſe of going to Briſtol, who had ſeen him at Briſtol, his farther evidence, if I take it rightly, is this, that, having undertaken to bring him before the Privy Council, he never ſaw him when he was in town, but at his own chambers.

Then he goes down to Portſmouth. It does not become me to repreſent to you, becauſe I think the evidence does not authorize me to do it, that the Captain of the veſſel might not know his name; and I ſhall remark to you more fully preſently, with reſpect to the abſence of this and other Captains. I think that in the abſence of theſe Captains, whatever they might probably know favourable to the priſoner, you ought to conſider them as knowing, and give him the benefit of all the ſuppoſition that you can make in his favour. I will put the caſe then, if you pleaſe, that Captain Clarke knew the name of the priſoner: it does not appear whether the reſt of the crew did know it or not: but it appears that he went by the name of the Doctor, from the time he embarked at Portſmouth till they went to Falmouth. He appears to have been repeatedly on ſhore at Portſmouth, and it is fit I ſhould ſtate that for his benefit. At Falmouth, as the evidence ſtands, he never was on ſhore but once. Whether you ought to collect from the nature of the account,

that

that has been given, any reaſon to ſuppoſe that he remained on board for the purpoſe of concealment, I rather leave to your judgment to decide, than to take upon myſelf to determine. However, this is clear, that there is, in point of fact, no one witneſs who hears this man ſay any thing with reſpect to his own ſituation, as connected with this project, till after they had ſailed from Falmouth; and it is a material thing that the converſation of this man, relative to this project, when he ſays that Pitt would ſend a frigate after him if he knew where he was, begins two days after the veſſel had ſailed from Falmouth, upon a voyage which, as one of my learned friends moſt truly ſtates to you, generally endures fifteen or eighteen months, or more, and in the courſe of which there is no land to touch at. Having left Falmouth, he begins the converſation with one of the perſons, in which he ſays, that Pitt would ſend a frigate after him. He is afterwards captured, and carried into the harbour of Breſt: while he is there, it appears now to be in evidence from the defendant's own witneſſes, that he ſtood at leaſt in a ſituation of ſo little diſlike among the perſons with whom he was living, that it has been ſtated that he might have had a ſituation of advantage there. Gentlemen, you will recollect, with reference to that, that it is proved by other witneſſes, that he ſtated before he left Breſt that he had ſettled matters to his ſatisfaction, and, having ſettled matters to his ſatisfaction, what is it that he does? He aſſumes the name of Wilſon; and he not only aſſumes the name of Wilſon, but he does this alſo, he takes the name of Wilſon, as a perſon of that name captured in the ſhip Hope. Now, an obſervation has been offered to your attention of this ſort, namely, that he was afraid of his creditors in this country. Suppoſing he changed his name to Wilſon, on account of his creditors in this country, what occaſion had he to ſtate that he was captured in the ſhip Hope? Would his creditors have found him out more readily by the name of Wilſon, captured on board the Pomona, than by the name of Wilſon captured on board the Hope? It is impoſſible for me to account for that circumſtance. It is my duty to mention to

you,

you, what my learned friend, who spoke last, stated—that Government knew the names of the persons who came on shore in this country.—It might be his project to take the name of Wilson, as captured in the ship Hope, with a view that it might not be understood that the person who came on shore at Mevagissy, was not Wilson captured in the ship Hope, but Crossfield captured in the ship Pomona; and I dismiss that part of the case with saying, that I cannot comprehend why the ship Hope was inserted with reference to any purpose in which the creditors could be concerned.

But, Gentlemen, consider what is stated by Penny, whose testimony is totally uncontradicted, whose character is wholly unimpeached, and, which I have therefore a right to say before a British Jury, is perfectly unimpeachable. The prisoner applies to him in the course of the voyage home—and what does he say to him? Does he say, I beg you will not mention that I have taken the name of Wilson as captured in the ship Hope—for fear my creditors should lay hold of me?—No:—He says, "You remember what I stated to you on board the Elizabeth." What was it he stated on board the Elizabeth?—That which I say is a confession of the fact charged.—He did not tell him on board the Elizabeth, that he was afraid of his creditors, and therefore about to change his name to Wilson, and substitute, instead of the Pomona, the name of the ship Hope; but he tells him that he was the person engaged in this scheme of assassinating the King, by means of a tube and barbed arrow—and that is the information which Penny is desired by the prisoner to forget in the course of this voyage.—Now, why he was to forget that, is a question which your consciences must determine!

But this is not all:—When he comes on shore, he is taken into custody, in consequence of an information given by Winter, who states a foolish story of a hare; and I am ready to admit, and think it becomes me to do so, that that seems to my mind at least a circumstance of such improbability, that, if this case depended upon Winter's testimony, though I believe a great deal of it; and I will state my reasons by and by, why I do so, I should think it an extremely hazardous thing to come to

a conclusion againſt the priſoner upon his evidence alone. Winter went before the Magiſtrate; and, whether Winter's underſtanding is conſiderable, or whether it is of that ordinary ſort, that entitles Captain Collins to call him a fooliſh fellow, the fact is, that the man's mind was ſo much impreſſed with the truth of what he has related here to-day, that he did think himſelf bound to ſtate the facts to a magiſtrate, and, wiſe, or mad, or fooliſh, or whatever you pleaſe to call him, ſuch an underſtanding, as he has, has been at leaſt fortunate enough to conceive of this buſineſs, as the underſtanding of three other ſenſible men have led them to conceive of it, who, in point of fact, confirm him in every circumſtance, that he has ſtated, except one, and that is the fact of the King having been actually ſhot at.—Now, the priſoner knew in this ſtage of the buſineſs, whether he came to this country for the purpoſe of avoiding his creditors, under the name of Wilſon of the Hope, or whether he came to this country under this name for the purpoſe of concealing a perſon, who was a party to the tranſaction charged upon this record. He now knew that he was accuſed of this moſt heinous offence.—What would have been the conduct of Mr. Croſsfield, if it was falſe that he had been party to this tranſaction? if it was falſe that any ſuch declarations had been made in France, as theſe four witneſſes have ſpoken to? I ſhould be glad to know whether it was not, in the natural courſe of tranſactions, that Mr. Croſsfield ſhould have ſaid—Let me go to this magiſtrate: I did leave the Kingdom of Great Britain for fooliſh reaſons, for reaſons, againſt the influence of which Palmer, the attorney, ought to have protected me, I did leave that Country under circumſtances of ſome degree of ſuſpicion; but I have been an unfortunate man, captured with my fellow priſoners in Breſt. I am ſure that neither Winter nor any other of my fellow priſoners, coming home with me in this ſhip, can add to the ſuſpicion by any information that can be given as to what my conduct in France has been.—But is that the caſe?—No—on the contrary, inſtead of meeting the inveſtigation of the magiſtrate, inſtead of avowing his innocence both in his tranſactions in France and in this Country—though he knows that the

charge

charge is made by one of his fellow priſoners, who came over with him, the mode, which he takes to get rid of the effect of the charge, as he is conveying to priſon, is what has been ſtated by two witneſſes. Queſtions are put whether he was not drunk, and whether he did not fall aſleep within half an hour after he ſpoke of the piſtols and the poſt-boy.—With reſpect to the effect of the anſwer to theſe two queſtions, that is for you to judge of; but there is no evidence that he did not underſtand what he ſaid. He attempts to corrupt the officers, and follows that up with a converſation, which I wiſh to repreſent accurately, becauſe it appears to my judgment exceſſively material.—He ſays, You had better than have five ſhillings from thoſe, who are to pay you, if you carry me to gaol, have two guineas a piece from me to let me eſcape.—The officer enquires what he would do with the poſt-boy.—His anſwer is to this effect—Lend me that piſtol, and I'll ſettle that.—This has been ſpoken to by two witneſſes.—Now, I put it to you, as men of conſcience, is this the conduct of an innocent man? Is it not the conduct of a man guilty of ſomething? If it be, I ſay it is conduct which proves to demonſtration the truth of what the witneſſes, who come from abroad, have ſaid. It does not prove the truth of what the witneſſes here have ſaid; but it proves a ſtrong ſuſpicion in the mind of the priſoner, that, when the perſons here, who were capable of being brought forward as witneſſes, were brought forward to ſpeak to facts, and thoſe facts ſhould be connected with the effect of the declarations made abroad, ſomething would be proved, from which a Jury might infer, that the fact, of which he is guilty, is the fact charged upon this record.——

Gentlemen, you will allow me now to draw your attention to material and weighty obſervations, which have been made to you upon that ſort of evidence, which has been termed, in the courſe of this buſineſs, confeſſional.—Gentlemen, I repeat to you again, on behalf of myſelf, and every individual in the Country, that the acquittal or conviction of a ſingle priſoner is nothing when compared to the ſacrifice of a great principle of juſtice. If, therefore, there is not legal clear evidence to convict

vict this priſoner, if he is not " provable attainted" according to the true meaning of thoſe words, which my Lord will ſtate to you preſently, you may perhaps ſee that there may be perſons in this country who are in great peril from the machinations of others—you may perhaps ſee that perſons in the higheſt ſituations are in the moſt peril, becauſe they are not defended by that law, which ſays, that as to offences againſt our fellow ſubjects, one witneſs is ſufficient. You may ſee all this; but you muſt not therefore convict that man. The evidence muſt be ſuch as the law requires to ſatisfy your conſciences: whether it wiſely requires ſuch evidence, it is not for you to conſider.—All that I aſk of you on the other hand, is, that you will attend to the conſequences of not convicting, if the evidence be legal—be ſufficient in point of law—in a caſe of ſo much importance as this.

Gentlemen, it is very true that confeſſion, as evidence, is open to all the weighty obſervations which have been ſtated from the authors, whoſe works have been quoted to you—They ſpeak the language of common ſenſe in ſtrong terms. With reſpect to High Treaſon, the books go beyond what has been ſtated: if there was no evidence but confeſſion, I am ready to admit, if that confeſſion had been made before twenty witneſſes, yet ſo much has the law guarded the party againſt the conſequences of mere confeſſion, where there are no facts and circumſtances, eſtabliſhed by teſtimony, which corroborates it, that it would be inſufficient: the law has ſaid that no man ſhall be convicted of High Treaſon, but upon his own confeſſion before a magiſtrate, or in open court—Therefore, Gentlemen, if I had called theſe witneſſes from France, to ſtate to you that this party did make ſuch and ſuch declarations, and had proved nothing elſe in the cauſe, my Lord would have told me, the moment I had ſtated my caſe, that it was due from him to the juſtice of the Country to tell the priſoner that I ought to give no evidence againſt him—But it is far otherwiſe, when evidence of confeſſions is opened—not to prove the fact done, but to prove the intent with which the fact was done, an intent that never can be, or but ſeldom can be, collected otherwiſe than from

ſuch evidence: it is far otherwiſe when a great variety of facts and circumſtances have been proved; and when a confeſſion is made, proved by a great number of witneſſes, that confeſſion conſiſting of very particular and very ſingular circumſtances, and thoſe very particular and very ſingular circumſtances, indenting, as it were, and ſquaring with the facts, which have been proved in ſuch a manner, that it is abſolutely impoſſible, in the nature of things, that a man could make the confeſſion, who had not been connected with the facts otherwiſe proved, and of which he gives an account in the confeſſion.

Gentlemen, it is ſaid, and ſaid truly, in thoſe authors, that there is great danger of perjury where you have nothing to go upon but confeſſion. But this never applies to a caſe where a great number of facts and circumſtances are proved, where the confeſſion connects itſelf with thoſe facts and circumſtances, where the proof of thoſe facts and circumſtances by other witneſſes ſupports the truth of the confeſſion, and the truth of the confeſſion aids, aſſiſts, and holds up the proof of thoſe facts and circumſtances, where the danger of perjury therefore is avoided by the very nature of the facts confeſſed, by the correſpondence of the matter confeſſed with exiſting facts, where there are a great number of perſons ſpeaking to confeſſions, where the confeſſions are made at different and at various times, yet all correſponding and connected with each other as to the ſubſtance of them, where the confeſſions are aided by the demeanour of the party, and where the conduct of the party gives proof that the confeſſions he had made are founded in truth. To illuſtrate this, if Penny had been called to ſay, that, when he was on board the Elizabeth, in France, this priſoner ſaid ſo and ſo, and nothing more had paſſed, that confeſſion would have one degree of weight. When it is proved, not only that he ſaid ſo and ſo at ſuch a time, but that an application was made to a man, in the courſe of the voyage home, not to diſcloſe the confeſſion that he had ſo made, that circumſtance adds another degree of weight. When the ſubſtance of the confeſſion ſpoken to by that one individual, is ſpoken to by three or four other individuals, the matter acquires a ſtill greater degree of weight, though,

though, after all, if you put them all, the confeſſions, together, they would not be ſufficient evidence in the caſe of High Treaſon. But, when you have witneſſes ſpeaking to theſe facts, which are the overt acts, witneſſes ſpeaking to the facts of two or three perſons applying to Hill, ſometimes two, ſometimes three, to the four braſs-founders to whom applications were made; and when it is proved that one of the perſons engaged in each and every of theſe applications to the braſs-founders, and in the application to Hill, was the priſoner at the bar; when you have two witneſſes to the facts, and the perſon is aſcertained, and confeſſion is added, which ſhews the intent with which theſe facts were done, I ſay the conſpiracy is moſt completely proved according to law, ſuppoſing Smith, Le Maitre and Higgins are perfectly innocent, and not only the conſpiracy, but the ſole acts of this perſon, amounting to Treaſon, are proved according to law—What are theſe confeſſions? are they ſtated in a looſe moment? are they caſual confeſſions?—They are repeated confeſſions—in four or five inſtances: they make mention of circumſtances as facts, which never could be mentioned at all, if they did not exiſt, and which are proved to have exiſted: it is proved, for inſtance, as the matter of the confeſſions import, that, in point of fact, applications were made to theſe braſs founders; that applications were made to Hill; it is proved that drawings exiſted—drawings which deſcribed the form of an arrow, a barbed arrow, which deſcribed a tube, a feathered arrow, which deſcribed the parts of a wind-gun.—Now, Gentlemen, attend to the circumſtances that are ſtated in all the confeſſions of the priſoner, the confeſſion to Dennis, the confeſſion to Le Bretton, the confeſſion to Penny, the confeſſion to Winter—Do not the confeſſions to theſe perſons in Breſt harbour moſt minutely correſpond with facts, models, and drawings, proved to have been done and made in England. Perhaps you may not give Winter's teſtimony any conſiderable credit. I will ſtate to you a reaſon upon which I ſubmit you ought to give him credit, notwithſtanding what you may think of the rate of his underſtanding. Is it not one of the moſt remarkable things that ever

happened, if Mr. Croſsfield had had no connection with the purpoſe charged in this indictment, that he, in Breſt, ſhould, in the very terms of his confeſſion, deſcribe, almoſt to the minuteſt accuracy, every thing which is depicted upon this paper: he ſpeaks of an arrow—a barbed arrow; he ſpeaks of a harpoon; he draws the form of it, to ſhew it, as feathered, to Winter: he ſpeaks of the poiſoned arrow; he ſpeaks of the tube; he ſpeaks of a wind-gun; he deſcribes, not only the inſtrument, but almoſt every particular, which actually belongs to, and appears in the drawing now produced to belong to the conſtruction of it.——Gentlemen, it is ſaid, and ſaid very truly, that the weight of confeſſion depends upon the mind receiving the confeſſion, and the mind conveying the confeſſion. But did this ever happen before, in any caſe, that a man ſhould in no leſs than four inſtances, addreſs his confeſſion, at four different times, to four different perſons; that theſe four different perſons ſhould agree with reſpect to the ſtate of his mind when he was conveying the confeſſion, and that the ſtate of their minds, when they were receiving the confeſſion, was preciſely the ſame, as to each and every of them. Theſe four perſons, underſtanding him to be conveying the ſtate of fact as to theſe inſtruments, all agree that the impreſſion upon their minds was that which they have ſtated to you to-day and yeſterday, it was an impreſſion that he was confeſſing his participation in the guilt now charged upon him.

Gentlemen, the declarations of perſons in a caſe circumſtanced as this is, are not, I apprehend to be conſidered as confeſſion of facts: they are not confeſſion of the facts; but they are declarations evidencing the intention with which the facts, otherwiſe proved, were done. Suppoſe, for inſtance, that a man was to point a muſket towards his Majeſty and any other perſon who had the honour to be attending him any where. Two witneſſes ſwear to the fact, that that muſket was pointed in ſuch a manner, that a Jury is ſatisfied that it was pointed at his Majeſty, and not at the other perſon; but, the inſtrument not being actually diſcharged, it remained to be tried with what intent it was pointed at his Majeſty.—Is the ſtate of the

the law of this country ſuch, that that fact of preſenting the muſket having been proved by two witneſſes, evidence of declarations by the party with reſpect to his intent, connecting themſelves, as Mr. Juſtice Foſter puts it, with circumſtances proved and with facts proved, is not ſufficient to eſtabliſh the intent?—Is it to be ſaid, that, it having been ſhewn by the two witneſſes, that the gun was ſo pointed, the teſtimony of twenty witneſſes, proving that they had heard the man ſay that he meant to diſcharge it at the King to kill him, does not amount to legal evidence of his intent?—I cannot ſo underſtand the law of England: if I am wrong in that, you will hear from the wiſdom that adminiſters the law here, that I am ſo, and will undoubtedly give the priſoner all the benefit that reſults from that correction.

What was Crohagan's caſe, which my Lord may recollect? He ſaid, "If I go to England, I will kill the King." The fact of his coming to England was proved: mere words do not amount to Treaſon: this fact was therefore proved: *quo animo* he came to England, was eſtabliſhed by proof of his own declaration of the intent with which he would come: the fact of his coming to England, the overt act, it might be neceſſary to prove by two witneſſes; but it is not in the nature of things that the law ſhould be ſo abſurd as that this ſhould be held by it, that, where the fact is diſtinctly proved, as laid in the indictment, a man ſhall not be at liberty to explain his own intent by his own declarations, or that the law ſhould ſhut out evidence of thoſe declarations, when other witneſſes ſpeak to them.

Having ſtated to you what I conceive to be the rule of law with reſpect to confeſſions under the correction of my Lord, the caſe, I take it, as proved againſt the priſoner, is this—That he was concerned, together with Upton and others (whether Le Maitre, Smith or Higgins belonged to the conſpiracy or not, is not material for your conſideration) in the forming of an air-gun; that is, to ſpeak in the technical language of the law, his heart compaſſed and imagined, at leaſt, the formation of an air-gun; and here I go moſt diſtinctly along with the

learned Judge, who intimated yeſterday, in ſtrong and expreſs terms, and which perhaps he will repeat again to you to-day, that if we get no further than to prove that Mr. Croſsfield went to the braſs-founder's, and went to Hill's, and made a model, and meant to fabricate an air-gun, and did begin to fabricate it, we have no caſe of Treaſon againſt Mr. Croſsfield. We muſt make out that theſe meaſures were taken with intent to effectuate (whether ſufficient or not to effectuate it, will hardly be neceſſary for me to diſcuſs after the evidence given by Mr. Mortimer) with intent to bring about the death of the King.

Now, with reſpect to the fact, that he was concerned in the fabrication of this inſtrument—it is beyond a doubt that three perſons were at Dowding's; that three perſons were at Flint's, is unqueſtionably proved; that three perſons were at another braſs-founder's, is unqueſtionably proved; and that two went, I think, to Bland's, Palmer not being one of the men, is alſo beyond doubt. Palmer proves Croſsfield to have been in that party: it is proved therefore beyond all doubt, if Palmer's evidence be taken to be true, that Mr. Croſsfield was one of the perſons, who was concerned in the fact. The fact is proved by three witneſſes, viz. Dowding, Flint, and Bland, and by another braſs-founder. The fact of applications to Braſs-founders to make ſuch an inſtrument as this, is proved by four witneſſes; and if it be proved that Mr. Croſsfield was one of thoſe perſons, I take it, if we ſtop there, the caſe, as to fact, is made good. Bland's evidence is extremely confirmed by Palmer's evidence; for Bland ſtates that two perſons came to him, the one of whom was Upton: he did not know the other perſon. Palmer ſtates in his evidence, that two perſons went to Bland's; that he came to Bland's after theſe two perſon's, and that the two perſons, who were there, were Upton and Croſsfield. Beſides this, it is proved in point of fact, that all the three were at Hill's; and Palmer proves the fact, that Croſsfield was one of the perſons who was at Hill's. What was done at Hill's, it will be material for you to attend to, when my Lord comes to ſum up. There are more than one perſon

to ſpeak to one or other of the facts charged; that is, to the fact of going to the firſt braſs-founder's, then to the fact of going to the next braſs-founder's, to the fact of going to the third and fourth braſs-founder's, and to the fact of going to Hill's; and Hill ſtates, not only that Upton took part with reſpect to the drawing, but he expreſsly ſtates as I took his evidence (if I am incorrect, I hope my Lord will ſet me right, and that you will not do me the injuſtice to ſuppoſe I am intentionally incorrect) that the ſtranger, who, it has been proved, was Croſsfield, did ſomething to the drawing, as well as Upton. So he ſtates, though it is not neceſſary to prove that fact, becauſe I apprehend there can be no manner of doubt, that, in point of law, if the purpoſe of Upton was to fabricate this inſtrument, with the intent which we have charged in this indictment; and if Mr. Croſsfield, knowing that purpoſe, of which it will be for you to judge, attended him to theſe places, and went through the conſultations along with him, he is juſt as guilty as if he had been the ſpokeſman upon each and every one of thoſe occaſions.

God forbid, Gentlemen, that I ſhould preſs the caſe more ſtrongly than I ought; but I muſt remark that theſe witneſſes, the braſs-founders, ſpeak, one after another, to circumſtances that require obſervation. One tells you, that the perſons who came, ſaid that the uſe for which the inſtrument was to be made was a ſecret; another ſeems to me to prove that their enquiry about the expence, and their enquiry as to the time it would take in making, were anxious. For what particular purpoſe it was to be made, the priſoner has not explained, nor why there ſhould be any anxiety about the time to be employed in making it. But when that time is made a circumſtance for enquiry, it ſeems to me that the inſtrument muſt have been to be fabricated to be ready at ſome time, which the party was looking to, for ſome purpoſe then to be carried into effect.—Hill ſaid it was to be for an electrical machine: to one witneſs they repreſented it, you ſee, to be for a ſecret purpoſe; to another, the uſe of it is falſely repreſented. All theſe witneſſes ſpeak of

a tube; and the declarations of Mr. Croſsfield, made in France, mention a tube, as well as a barbed arrow.

Gentlemen, as to the evidence of the witneſſes to the priſoner's declarations abroad, is it poſſible that that evidence can be falſe? Upon the ſuppoſition that it is not true, is it not the moſt marvellous thing that ever happened in the courſe of human events, that the circumſtances detailed in the declarations ſpoken to with reſpect to the exiſtence of a tube, with reſpect to the exiſtence of the intention of employing an arrow—a barbed arrow—a feathered arrow, in the form of a harpoon—ſhould every one of them receive the ſemblance of truth ſo ſtrongly from the fact that Upton, who was along with them at theſe braſs-founders' houſes, ſhould actually have in his poſſeſſion ſuch a braſs tube as was mentioned; from the fact that this ſame Upton ſhould have in his poſſeſſion this drawing of an arrow, in the minuteſt circumſtance tallying with the effect of thoſe declarations, which the witneſſes from France inform you were there made by the priſoner?—Is it to be accounted for, in the nature of human things, that the priſoner could ſtate himſelf, in theſe declarations, to be one of the perſons to aſſaſſinate the King with inſtruments, ſuch as he deſcribes in thoſe declarations, and that inſtruments, or models or drawings of inſtruments, tallying with that deſcription, ſhould be found in the poſſeſſion of Upton, who was with him when he called at theſe braſs-founders' houſes, if the priſoner did not mean to ſpeak that which was the truth, and which he knew was the truth? Such a coincidence of circumſtances ſeldom happens to make good the truth of declarations, and declarations are ſeldom found to correſpond more exactly with circumſtances which actually exiſted. Such an inſtance very rarely occurs of declarations ſo made good by the actual exiſtence of facts, as that which is furniſhed by this caſe.—Then, Gentlemen, this comes at laſt ſimply to the queſtion of intention. I before mentioned that I had ſome obſervations to make to you about our not calling the captains. Gentlemen, it is perhaps one misfortune, if I dare to uſe ſuch a word with reſpect to any proviſion of the law of my Country; but it certainly is a circumſtance

ſtance poſſibly to be occaſionally regretted that the law has ordained that the proſecutor ſhall not add to the liſt of witneſſes which he has delivered to the priſoner. I am therefore bound, in the diſcharge of the duties of my office, to determine between the difficulty of trying perſons upon ſuch evidence as I can bring forward, or the delaying a trial without a poſſibility of determining when I ſhall be able to bring forward more evidence.——I add, Gentlemen, that in this caſe of High Treaſon, I meant moſt ſtudiouſly to abſtain in opening it (and I hope my Lord will go along with me in thinking that I have not failed of my purpoſe) moſt ſtudiouſly to abſtain from ſtating to you the ſubſtance of any converſations, or declarations, or language, ſeditious or not ſeditious, which this priſoner might have uſed when he was abroad, or when I could have placed him in other ſituations, if they had not a direct application to the ſubject now before you, and did not amount to declarations upon the very point now before you.—Perhaps, Gentlemen, I did the priſoner no injuſtice in that reſpect. I might have known—I do not inform you whether I did or not—I might have known that I could have called a witneſs to prove the fact of the priſoner's ſinging that ſong of "Plant, plant the tree," ſome part of which has a very ſtrong application certainly to a general purpoſe, hoſtile to the exiſtence of Kings—It is, to ſtate it altogether, the moſt complete epitome of anarchy that I ever ſaw in my life. You will obſerve, if you caſt your eyes over it, that it contains, in the ſhape of a ſong, the averment of an overt act of every ſpecies of Treaſon known to the law of England. I did not wiſh originally to bring forward ſuch facts as theſe; I thought it not otherwiſe than fair, as between the Country and the priſoner, to abſtain from doing ſo.—I know that there are individuals in the Country, who may blame me for not preſſing priſoners up to the extent, in which they may wiſh that I ſhould do ſo. I am ſatisfied, upon reflection, and I have formed my own determination upon that ſubject, that a lenient adminiſtration of the law, is the wholeſome and ſalutary adminiſtration of the law: it is that which is congenial to the character of Britons; and I am perſuaded that a miſcarriage

of

of juſtice by lenity, will never deeply affect the adminiſtration of juſtice in the Country. On this account, I did not chooſe originally to bring forward ſuch evidence; but when Captain Collins was called, and when I was willing to give credit on behalf of the priſoner to this extent—that you ſhould believe that every man, whom I either did not call, or could not call, had nothing to ſay but what was favourable towards the priſoner. When Captain Collins was to be brought forward to give ſuch an account of the demeanour of the priſoner abroad, as I was taught to expect, from what had been opened, he would have given, it was my duty to aſk Mr. Cleverton, when he had mentioned the circumſtance of the republican ſongs (for I would not originally have introduced it) whether that ſong was not ſung by the priſoner. It is now become part of the evidence; it is a declaration in evidence of the general ſentiments of the priſoner, if you think he entertained the ſentiments that ſong expreſſes; and I ſay that that ſong amounts to diſtinct evidence that the writer of it, or he who adopts its ſentiments, (to what extent this priſoner adopted them, is for you to determine, and not for me to decide) is a man not only not friendly to the conſtitution of his Country, or to the being of a King, but capable of proceeding to any extent in overturning every eſtabliſhment, civil, and religious, in the Country. I think it my duty, however, on the other hand, to ſay to you, with reſpect to all perſons not produced, who either could be produced before I delivered my liſt of witneſſes, or could not be produced becauſe I had delivered my liſt, you muſt do the juſtice to the priſoner to perſuade yourſelves, that no one of them could have ſaid any thing, other than favourable to him.

But, Gentlemen, when that is done, it is for you to decide this great caſe. The direction which you may receive here, in matter of law, and as to the ſufficiency of the evidence, if wrong, may be corrected. It is the boaſt and glory of the conſtitution of England, that we do not in this Country proceed upon thoſe fooliſh theories of perfection, which are not made for man. The conſtitution of England is founded upon principles which regard thoſe who are to live under it, as being but

men.—

men.—There are no parts of our inſtitutions, in which we do not acknowledge the infirmity of the wiſeſt, and the higheſt, and beſt of thoſe who may be called to adminiſter them.—In the adminiſtration of juſtice, proſecutors and juries, we acknowledge, may err; and it is perhaps the higheſt commendation that can be ſtated of thoſe ſitting above me, that they are always anxious to ſet right the effect of their miſtakes, and are never influenced, in the execution of their duty, by a falſe pride to be unwilling to ſee, or, ſeeing, to correct their errors.—I have ſaid here, that you have a clear caſe before you. You will have the Judge's direction in law: if you are ſatisfied by that direction, as to the matter of law—if you are convinced by it, that the evidence offered is competent and legal evidence, to be offered as proof, I muſt then, Gentlemen, (I am ſaying this in circumſtances that diſtreſs me; but I am bound to do my duty firmly to my Country, however painful it may be to myſelf,) I muſt then call upon you to lay your hands upon your hearts, and either to ſay that the priſoner is guilty, or that theſe ſailors, who come from Breſt with the information which they have given you, are, every one of them, perjured.

Gentlemen, the law of this Country, in its benignity, wiſhes every priſoner a good deliverance: it is the humane language of the law—after he has pleaded, it ſays to him, God ſend you a good deliverance.—My prayer is, that you may be able to find in this evidence, that which will juſtify you to God and your Country in acquitting the priſoner; but, if you cannot find that in the evidence, it is likewiſe my duty to my Country and to every individual who lives in it, to entreat that you will moſt ſeriouſly recollect in what a ſituation of peril, danger and hazard, incapable of being deſcribed, you place the Country, and the Sovereign of it, if the caſe be ſuch as ought to ſatisfy your conſciences, and, being ſuch, you ſhould heſitate about pronouncing the verdict of the law! may God direct you in the execution of this duty! I am ſure the Country will be ſatisfied that you mean to execute it with integrity; and, feeling that confidence, I ſhall reſt upon your concluſions with the moſt perfect ſatisfaction.

Mr.

Mr. Adam. My Lord, my learned friend Mr. Gurney deſires me to ſtate one circumſtance that he omitted to mention, which accounts for Mr. Croſsfield's knowledge of this ſuppoſed conſpiracy to aſſaſſinate the King by the means of an air-gun and a poiſoned arrow—that immediately upon the apprehenſion of Smith, Higgins and Le Maitre, all the circumſtances to which Upton had depoſed were publiſhed in the news-papers.

Mr. Attorney General. I do not know the fact; but it is very probable.

Mr. Juſtice Groſe. I dare ſay they were.

SUMMING

SUMMING-UP.

Lord Chief Justice Eyre.

Gentlemen of the Jury,

This priſoner, Robert Thomas Croſsfield, ſtands indicted, together with three other perſons who are not now upon their trials; namely, Paul Thomas Le Maitre, John Smith, and George Higgins, for that they did malicioufly and traitorouſly compaſs, imagine, and intend to bring and put our Sovereign Lord the King to death.—This indictment ſtates, as by law it muſt do, thoſe leading facts which are the evidence of that compaſſing and imagining, and in the language of the law are called the overt acts; that is, the acts by which the ſecret intention is made manifeſt. Thoſe acts are required to be proved by two witneſſes; *i. e.* by two witneſſes to ſome one overt act, or by one witneſs to one overt act, and another witneſs to another overt act of the ſame ſpecies of Treaſon.

The different acts which are charged upon this priſoner, and the other priſoners, from whence this charge of High Treaſon is deduced, are, firſt, that they, together with others, conſpired, combined, conſulted, conſented, and agreed to procure, make, and provide, and cauſe to be procured, made, and provided, a certain inſtrument for the purpoſe of diſcharging an arrow, and alſo a certain arrow to be charged and loaded with poiſon, with intent to diſcharge, and cauſe to be diſcharged, the ſaid arrow ſo charged and loaded with poiſon, from and out of, and by means of the ſaid inſtrument, at and againſt the perſon of our Lord the King, and thereby to kill and put to death our ſaid Lord the King. You will obſerve, that this is a ſpecial and complicated deſcription; the overt act conſiſts of a conſpiracy to prepare an inſtrument of a particular deſcription, and for a particular purpoſe: the particular deſcription is, that it ſhould be an inſtrument to diſcharge an arrow, but it is not every arrow according to this deſcription, it is an arrow to be loaded with

with poiſon, which arrow is to be diſcharged by means of this inſtrument—this is the firſt overt act charged in this indictment.

The next overt act charged is, that theſe perſons employed and engaged one John Hill to faſhion two pieces of wood, to be uſed as models for making and forming certain parts of the ſaid inſtrument from and out of which, and by means of which, the ſaid arrow was ſo intended to be diſcharged. This overt act does not go to the whole extent of the former, for it only charges the perſons indicted with the particular fact of having employed Hill to make two pieces of wood as models for forming parts of the inſtrument, but ſtill the inſtrument referred to is the ſame inſtrument as ſpecially deſcribed in the former charge, and the purpoſe referred to is the ſame ſpecial purpoſe. It therefore amounts to this; that if they did not conſpire to form the whole inſtrument with the arrow loaded with poiſon, yet that they did employ Hill to make two pieces of wood as models for a part of that inſtrument which was to be employed in diſcharging the poiſoned arrow. It alſo adds, that they delivered to John Hill a paper with certain drawings thereon, drawn and deſigned as inſtructions and directions for making ſuch model.

The next charge is, that they conſulted among themſelves and others concerning their traitorous killing and putting to death the King by means of the inſtrument aforeſaid, and how and where ſuch killing and putting to death might be moſt readily and effectually accompliſhed.

This is ſo ſtated becauſe if perſons who conſpire the death of the King, and had meant to do it in this particular way, by procuring ſuch an inſtrument to be framed, had only once conſulted how they were to bring it about. The mere conſultation is certainly in law a good and ſufficient overt act to maintain the charge of compaſſing the death of the King; this you ſee would reſt upon conſultation only.

The next charge is, that they employed Thomas Upton to aſſiſt in making the ſaid inſtrument, out of which the ſaid arrow was ſo intended to be diſcharged at and againſt the King for the traitorous purpoſe aforeſaid; and that they delivered,

and

and cauſed to be delivered to Upton, a certain paper with figures and drawings thereon, drawn and deſigned as inſtructions and directions for making ſuch inſtrument, and alſo certain pieces, that is to ſay, two pieces of wood as models for the making and forming certain parts of the ſaid inſtrument.

The next overt act is, that they delivered to Thomas Upton a certain metal tube to be uſed by him in the making and forming the ſaid inſtrument, out of which the ſaid arrow was ſo intended to be diſcharged.

Theſe different overt acts have all of them a connection in one reſpect or another with the particular inſtrument eſpecially deſcribed in the firſt of the overt acts, which was an inſtrument to be uſed for the purpoſe of diſcharging an arrow, which arrow was to be poiſoned. But I ſuppoſe thoſe who have the conduct of this proſecution, aware of the difficulty that there might be in proving that inſtrument in the preciſe form in which they have there ſtated it, and alſo that it was to operate by means of an arrow to be poiſoned, have, in the ſubſequent overt acts, very much narrowed the deſcription, and they have therefore contented themſelves with ſtating, that theſe perſons did conſpire together to procure an inſtrument to be made, not ſaying of what kind, nor deſcribing its operation, but an inſtrument to be made for the purpoſe of killing and putting to death the King, and they then follow that up with overt acts ſimilar to thoſe already ſtated, only referring to the inſtrument as deſcribed in this latter part of the indictment. In ſubſtance there are therefore two diſtinct charges, one a charge of their having been concerned in conſulting about framing, and in framing either the whole or parts of the inſtrument ſpecially deſcribed for the purpoſe of throwing a poiſoned arrow, the other that they have been concerned in procuring an inſtrument, though perhaps not for the purpoſe of throwing a poiſoned arrow, yet intended and calculated in ſome manner to procure the death of the King.

Gentlemen, this is the ſubſtance of the indictment, and the evidence on both ſides has been laid before you, and it is a ſatisfaction to me to find that no queſtion of law can poſſibly

ariſe

ariſe in the caſe, except it be a queſtion whether there are or are not two ſufficient witneſſes to the overt acts charged, for as to the charge of compaſſing the death of the King, it is perfectly well underſtood; and what are and what are not overt acts of that charge, are alſo well underſtood, and it has not even been queſtioned whether any one of theſe overt acts, if proved, would be a ſufficient overt act of that charge of conſpiring the death of the King; they are indeed all of them acts directly and immediately conducing to the purpoſe of an attack upon the King's perſon, to the horrible purpoſe of deliberate aſſaſſination of our moſt gracious Sovereign. I have now two duties impoſed upon me; the firſt is, to recapitulate the evidence as correctly as I have been able to take it; the next is to point out to you for your aſſiſtance the application of that evidence to all, or to any of thoſe overt acts, ſome or one of which muſt be proved in order to conſtitute proof of this indictment.

The firſt witneſs called on the part of the proſecution was John Dowding; he ſaid, that in September 1794, he worked with a Mr. Penton, a braſs-founder, No. 32, New-ſtreet-ſquare; that on the 8th of September, he was called into the counting-houſe, there he found three men, one of whom was lame, and whom he has ſince found to be one Upton; they aſked the witneſs whether he could make them a tube? he enquired what ſort of a tube? they ſaid it was to be three feet long, five-eighths of an inch in the inſide bore, ſeven-eighths the outſide, and one-eighth of an inch thick; they ſaid it muſt be quite perfect, and quite a ſmooth cylinder in the inſide; and they aſked what the price of it would be? he told them he could not tell: they aſked if he could tell them within a few ſhillings? he ſaid no, he could not: he ſhewed them a piece of a cylinder, they ſaid that would do provided it was thicker, and by being thicker it would be ſmaller in the bore: the witneſs ſaid he muſt make a tool on purpoſe if they wanted to have it quite perfect in the inſide, and he could not anſwer for what the expence would be; if they would tell him the uſe of it he ſhould be better able to judge how to make it, and would make it much better for their uſe: the anſwer was from

Upton,

Upton, he ſaid that that was a ſecret; but he ſaid that the other perſons ſeemed to join in what Upton then ſaid; he ſaid he did not undertake the job; he told them that he was buſy, and it was not worth while to undertake it: he ſaid they then produced a tube which they had before bought at his maſter's ſhop which they returned, and took the money back, a ſmall ſum, I think about eight-pence or ten-pence.

He was aſked upon his croſs-examination as to his knowledge of the other two perſons, he ſaid he had never ſeen them before; that they all ſtayed in the place while he was talking with them; that there were women lackering braſs in another room, but he does not know that any one of them went out to ſpeak to thoſe women; and there is no evidence of any thing of that ſort; he ſaid he could not charge his memory with any thing particular that was ſaid by the other men.

The next witneſs, Joſeph Flint, is a braſs-founder, in Cock-lane, Snow-hill; he ſaid, that on ſome day in the month of September, but he could not fix the day, after dinner, he was called down by his apprentice; and he found three perſons preſent, one of whom was lame, he obſerved he limped as he went out: they aſked for a long piſtol barrel; he produced them a muſquetoon barrel, but they ſaid that would not do: they did not want it plugged up at one end; he told them he ſuppoſed they wanted a ſtraight cylinder; they ſaid they did, that they wanted it to be five-eighths of an inch diameter in the bore, and one-eighth of an inch thick; they ſaid if he would caſt and bore it, they would finiſh it themſelves: he told them he ſhould not undertake it unleſs they brought him a pattern; one of them aſked whether a rocket caſe would not do; he ſaid it would, provided the ends were plugged up; he ſaid at that time the length of the inſtrument was not mentioned: one of them aſked the witneſs how long he would be making it? he anſwered, about three days. He ſaid the lame man ſeemed to be the principal, but that he was not the man who aſked in what time it might be finiſhed, therefore one of the other men muſt of courſe have aſked that queſtion. He ſaid, in September 1795, he ſaw Upton, but he could not take take upon

himſelf to ſay whether that was the lame man he ſaw at his houſe.

The next witneſs is James Bland, a braſs-founder, in Shoe-lane, Fleet-ſtreet; he ſaid that in the month of September 1794, but he could not fix the day, two men came into his ſhop, that in about five minutes after they were gone out a third came in, and aſked where thoſe two men were gone? the witneſs ſhewed him which way they went, and that man followed them: he ſaid that when thoſe two perſons were in the ſhop, they aſked him for a tube, or a barrel, he told them if they wanted a barrel they muſt apply to the watch-makers, if they wanted a tube to the drawers; he ſaid that they went away, and then it was that the man came in and aſked for the two gentlemen, and followed them; he ſaid that the third perſon he believes was Palmer; he told them they were gone down the lane, and he went that way; he did not then know Palmer; he ſaw Palmer ſince before the Privy Council, and he ſaid one of the others was a lame man.

The next witneſs is David Cuthbert, who lives at No. 9, Greyhound-court, Arundel-ſtreet, he is a mathematical inſtrument-maker; he ſaid he knew Upton, he had called upon Upton to ſubſcribe to the relief of the wives and children of perſons in cuſtody ſome time ago for High Treaſon; that he had no memory of what had paſſed at that time. The ſecond time he called to know how the ſubſcription went on, and they had ſome converſation about the Correſponding Society. Upton, he ſaid, was a watch-maker, and he gave him an invitation to come and ſee an engine of his, which was an air-pump and an air-gun; he ſaid he explained them to Upton; that Upton came again next day with another perſon; he ſaid Upton had diſpleaſed him with the turn of his converſation, and he did not like him nor his acquaintance. The other perſon talked of being fond of ſhooting, ſaid he had met with an injury by the exploſion of a gun, and had loſt three fingers, but the witneſs ſaid he did not look to ſee whether that was ſo or not, and there is not in the evidence any thing which has ſerved to apply that circumſtance to either this priſoner, or to any other perſon; he ſaid that man handled the gun: Upton aſked the witneſs whether he wanted a job;

he ſaid he had more buſineſs than he could do: he ſaid he had no converſation with the other about the properties of the air-gun, and never ſaw that man ſince; he ſaid he ſhould not have known him if he had met him at the end of ſix hours; he does not know that he ſhould have known him if he had met him a minute after, but he took him to be a much taller man than the man he afterwards ſaw at the Privy Council; that Upton, in his judgment, did not appear to be then acquainted with the properties of air.

The next witneſs is Peregrine Palmer, he deſcribes himſelf to be an attorney, in Barnard's-inn; he ſaid he has been acquainted with the priſoner ſixteen years, that he was a phyſician; that he had reſided in a number of places during his acquaintance with him; that the laſt place he knew him to lodge at was Dyer's-buildings; that they were upon terms of great intimacy, and were both members of the Correſponding Society; he had ſeen him there, and believed he was a member—the witneſs himſelf was a Delegate and Chairman of a Committee; he ſaid he might have ſeen Croſsfield there three or four or five times, that they were of the ſame diviſion; he ſaid he knew Upton; that in the beginning of September 1794, he accompanied the priſoner, Croſsfield, to Upton's; he ſaid that they all went together afterwards to a houſe in New-ſtreet, or New-ſtreet-ſquare, which he thinks was a braſs-founder's, what paſſed there he does not know; Upton appeared to him to have ſome buſineſs with the braſs-founder; they were there but a few minutes, but he can recollect nothing; as to himſelf, he ſaid there was nothing tranſacted by him, that it was Upton's buſineſs; he ſaid that he had not the leaſt recollection of what paſſed; he ſaid he would not ſwear that nothing was produced to that man, but he does not know that there was; that from thence they went to another braſs-founder's in Shoe-lane, he himſelf did not go into that houſe at firſt, they were in the houſe a minute or two before him; he went in to enquire after them, they were gone; he overtook them in the ſame ſtreet, and then they went to Cock-lane, to a perſon in the ſame line of buſineſs; they all three went into that houſe,

and ſome directions were given by Upton about ſomething in the way of Upton's buſineſs; he ſaid he had no recollection of any thing that was ſaid about a braſs tube or a model, but that there might be ſuch a converſation; that he does not recollect having the tube ſhewn to him at the Privy Council; that he had ſeen Croſsfield's writing, but could not ſay whether certain papers produced were of his hand writing; he does not take upon himſelf to ſwear that they were; on the contrary, he ſays he is not ſufficiently acquainted with the hand writing to form any belief upon the ſubject; he ſaid ſome papers were ſhewn him at the Privy Council, he does not recollect that ever he ſaw them before; he ſaid they were but a few minutes in Cock-lane, he recollects nothing that paſſed; he ſaid they went afterwards to Hill's, a turner, in Bartholomew-cloſe, he recollects Upton's giving ſome inſtructions to Hill, ſomething of a model or a pattern was mentioned, and he thinks he produced a drawing as inſtructions for ſomething that Hill was to do, but he cannot ſay whether it was left or not; he ſaid he thinks that Upton made it at the time in the houſe; he has no recollection of any braſs tube being produced there; he ſaid he thought they parted ſomewhere thereabouts, and that the meeting with Upton was accidental; he ſaid Upton lived in Bell-yard, that he might have ſeen Croſsfield once or twice at Upton's before that; the priſoner at that time lived in Dyer's-buildings, and lived there at the time when Upton's information was given; he ſaid that he and Croſsfield went together ſoon afterward to Briſtol; that it was many months before the proclamation was iſſued for apprehending Croſsfield, he thinks it was in the month of October 1794; he ſaid the priſoner had a wife, but he believes ſhe did not reſide with him in Dyer's-buildings; he ſaid he left the priſoner at Briſtol, as he underſtood he had ſome idea of ſettling there; that he came back to London again about the time of the witneſſes being examined before the Privy Council; that he did not then lodge in Dyer's-buildings, nor does he know where he did lodge; he thought he received one letter from him from Briſtol, but did not believe he had written to Croſsfield there; he ſaid

he

he might ſee Croſsfield after his return two or three times at his own chambers; he after that ſaw him no more till he ſaw him under examination at the Privy Council; he ſaid Croſsfield was much in the habit of coming to his chambers, they were upon terms of great intimacy; Croſsfield was in an ill ſtate of health at that time, and was forced to take large quantities of opium; that Croſsfield was acquainted with Upton; he thought Croſsfield became acquainted with Upton by ſeeing him at the Correſponding Society; he ſaid he ſaw an electrical machine at Upton's ſhop; he ſaid Upton became diſgraced in that Society, that Le Maitre, one of the perſons now charged in this indictment, was particularly offended with him; he ſaid he had attended the Society in Auguſt and September 1794; he then ſtated the occaſion of Upton, and himſelf and Croſsfield, being together that day; he ſaid that Upton had a watch of his to repair; he thinks he and Croſsfield had dined together ſomewhere in the neighbourhood of Temple-bar, and he meant to call on Upton for this watch; he ſaid he had no particular recollection who it was that ſpoke to them in New-ſtreet-ſquare, whether it was the maſter or the ſervant; that his reaſon for not going into the ſecond houſe was, that he had a neceſſary occaſion to ſtop; he ſaid that he and Croſsfield meant to have gone together into the city, and happening to call upon Upton for the watch, Upton ſaid he was going that way, and would accompany them, which was the occaſion of their being together that day; he ſaid he ſaw Croſsfield publicly about the time of Smith and Le Maitre being taken into cuſtody; that he and Croſsfield went ſoon after that to Briſtol, that Croſsfield had an intention three or four months before to go to Briſtol, that he meant to analyſe the waters, and if he found any ſucceſs he thought of ſettling there; that he ſaw him every day while he ſtayed at Briſtol, and that he appeared there as publicly as he had done any where elſe; he thinks Croſsfield remained at Briſtol after him two months, and returned to town about the time that he, the witneſs, was examined before the Privy Council; he ſaid, as well as he recollects, the laſt time he ſaw Croſsfield, was on the laſt day he was before the Privy Council, in the month of January; that the reward for

apprehennding Croſsfield was publiſhed a conſiderable time afterwards; he ſaid, upon his further examination, that when he was firſt examined before the Privy Council, he mentioned his knowing Croſsfield, and undertook to the Privy Council to endeavour at leaſt to find Croſsfield; however, he ſays notwithſtanding that he did not produce Croſsfield at the Privy Council, he thought he ſaw him in the early part of the laſt day when he went to the Privy Council; that when he was firſt examined, he told Croſsfield of the circumſtance of his (Croſsfield's) attendance being required at the Privy Council, and of his having ſaid he would endeavour to produce him, but Croſsfield ſaid he was going abroad as ſurgeon to a ſhip, and that his ſtaying in town might be the means of preventing his voyage, and therefore Croſsfield did not chooſe to go, and he ſays he did not mention to the Privy Council his having ſeen Croſsfield.

The next witneſs, John Hill, ſaid he was a member of the Correſponding Society, of Diviſion No. 6, that he knew Upton a little, and he knew Palmer; that Upton, Palmer, and another man, came to his houſe in Bartholomew-cloſe, in September 1794; Upton aſked him whether he could turn in wood? he ſaid yes; he then aſked him if he was ready to do a job for them? he ſaid yes: Upton began to deſcribe what he wanted; the witneſs ſaid he did not underſtand him; that Upton then gave him a ſketch, he believes the ſketch which is now produced in evidence, and he thought it was made in his preſence, and upon a piece of paper that belonged to him, and with his pen and ink; he aſked Upton what it was for, Upton ſaid it was for ſomething in the electrifying machine way; he was to take it to Upton's houſe, and he would ſee him paid; he ſaid the ſtranger did ſomething towards making that ſketch, what it was in particular he could not recollect, but he thinks he did ſomething; that it was done principally by Upton's direction; he ſaid he does not recollect that Palmer did any thing to it; he ſaid a piece was to be made ſtraight like a round ruler, and there was ſomething to be done from it in braſs work; he ſaid he carried the models home to Upton's, three days after; he found him at cards, and delivered the models to him; this he ſaid was about the middle of Septem-

ber;

ber; he ſaid there were ſome imputations upon Upton in the Correſponding Society; that Higgins, one of the perſons indicted, ſaid ſomething which affronted Upton, and they were about to inveſtigate Upton's character, when he choſe to ſave them the trouble by taking himſelf away; that Higgins ſaid, as he went out, there he hops off: he ſaid, that after Upton was apprehended, he one day called upon the witneſs; they were here going to enter into evidence of ſome declarations that were made by Upton, but I thought it not proper to receive that evidence under thoſe circumſtances.

The next witneſs was John Le Bretton; his account is, that he ſailed in the Pomona, a South-Sea Whaler, from Falmouth, on the Southern fiſhery, round Cape Horn; the priſoner came on board a week before they ſailed from Portſmouth, which was the 29th or 30th of January; that the priſoner was ſurgeon, and was called the Doctor, he ſaid he did not know his name; they ſailed upon the 13th of February from Falmouth, and were taken on the 15th by a French corvette and carried into Breſt; they arrived there upon the 23d; he ſaid that when the liſt was made out of the priſoners to be ſent on ſhore at Breſt, the priſoner wrote his name Robert Thomas Croſsfield, and went in the firſt number of the priſoners; that when he went away, he wiſhed them a good bye, and ſaid he was happy in going to France, he would ſooner go there than to England; he afterwards ſaw him in the corvette; he ſaid he heard the priſoner ſay he was one of thoſe who invented the air-gun to ſhoot or aſſaſſinate his Majeſty: the witneſs aſked him what it was like? the priſoner anſwered, that an arrow was to go through a kind of tube by the force of inflammable air, that he deſcribed it with his finger to be like one of their harpoons; he ſaid that when this priſoner was to go home by the cartel, he then gave his name in H. Wilſon; that he helped to make out the liſt, and he put down his own name H. Wilſon: he alſo deſcribed himſelf in that liſt as having been captured in the Hope, and as being a paſſenger; he ſaid that there were twenty-three men belonging to their veſſel; that Mr. Charles Clarke was the Captain, who likewiſe came back in the cartel; he was aſked about Clarke; he ſaid

he ſaw him at Chriſtmas, and he, as well as he recollects, was not examined before the Privy Council; he ſaw him afterwards at Mr. White's, and on board the ſhip, and at his lodgings in Wapping; he ſaid he once ſaw him at Mrs. Smith's, but that he did not then lodge there; that he ſaw him when he was fitting out his ſhip, and may have talked with him, but has no recollection of any particular converſation about Croſsfield, excepting that he ſaid he had been examined at the Privy Council; he did not inform him of the ſubject of his examination, and he ſays he did not aſk him whether he had not overheard his converſation with Croſsfield; that you ſee comes to be material, becauſe Mrs. Smith has been called for the priſoner, in order to faſten a contradiction upon him with reſpect to that circumſtance; he ſaid Captain Clarke was never ſo inquiſitive as to aſk him what he had ſaid upon his examination, nor did he ever tell him; he ſaid he had not ſeen him above two or three times, and he was now out of England; he ſaid that he was frequently in company with Croſsfield at Portſmouth before they ſailed, he was on ſhore with him twice on two different evenings: the witneſs ſaid he was boat-ſteerer, an officer on board this veſſel; he went on ſhore at Portſmouth to buy neceſſaries, and he ſaid Croſsfield appeared there publicly; he ſaid the ſhip was loaded with caſks of water and proviſions, and the Captain's private trade, and alſo a little private trade of ſome of the officers, what that was he does not take upon himſelf to know; they put into Falmouth by ſtreſs of weather on the 2d of February; they ſailed again on the 13th; Croſsfield was never on ſhore at Falmouth, or at moſt but once; at firſt he ſaid there were only their ſhip's crew on board the French ſhip after they were carried into Breſt, and that they were all concerned in a ſcheme to ſeize the French ſhip, Croſsfield and all; there were ſome foreigners on board who would not agree to it, and therefore the ſcheme failed; they firſt went into the roads at Breſt; they had no concern with any other Engliſh priſoners till they were put on board the priſon ſhip the Elizabeth; that Croſsfield was one of thoſe who was put on board her; he mentioned two other veſſels lying near them, the L'Achille and the Normandy; that Croſsfield ſpoke

French,

French, and ſometimes ſerved as an interpreter; Captain Cleverton, the maſter of another ſhip, was on board the priſon ſhip; he thinks Mr. Cleverton meſſed with Croſsfield; there was alſo a Captain Collins there; whether he was on board or not he does not remember; he was afterwards removed from the Elizabeth to the Peggy; that the Active Increaſe was laſhed to them; that there were three priſon ſhips laſhed together, and that they were all on board; Mr. Cleverton was at the hoſpital for ſome time; that Captain Yellowly commanded one of the cartels, and he ſaid he knew that the priſoner's name was Croſsfield, and he made no ſecret that he knows of about his name; he ſaid their private trade was in a few trunks, ſome part of it was ſold on board the priſon ſhips, by the indulgence of the perſon who took them; that they permitted the crew to take poſſeſſion of ſome part of the private property. He was aſked whether he had not ſome words with Croſsfield about it, he ſaid no, and that he never heard of Croſsfield's threatening to inform the under-writers of this tranſaction, about the private trade which was ſaid to have been in this way embezzled, and which was ſuppoſed to be inſured. I do not ſee that any thing turns upon that; there is no contradiction introduced.

Thomas Dennis, the Chief Mate of the Pomona, ſaid, that he ſailed in her from Portſmouth; that the priſoner ſailed on board that veſſel as ſurgeon; that he went by the name of the Doctor; that he did not rightly know his name till he got into France; that he had never ſeen the priſoner before he came on board; that the night after they ſailed from Falmouth, the priſoner ſaid that if Pitt knew where he was, he would have ſent a frigate after him; that Pitt was to have been ſhot going over Weſtminſter Bridge, but had avoided it by going another way; that his Majeſty was to have been aſſaſſinated by a dart blown through a tube, and that he knew how the dart was conſtructed, and ſomething he mentioned about a harpoon; he ſaid, that when they were taken by the French, he ſhook him by the hand, and ſaid he wiſhed they might get ſafe to England, he was happy he had got out of England, and was going to France. This witneſs mentioned the circumſtance ſpoken of by the other witneſs,

witneſs, that when the liſt of priſoners was delivered in at Breſt, he delivered his name R. T. Croſsfield, and ſaid he had no occaſion then to be aſhamed of his name. When the liſt was made out for the exchange of priſoners, and the priſoners were to go to England, he ſaid he changed it to H. Wilſon, and deſcribed himſelf as being captured in the Hope brig, and this he did in his own hand; when the liſt was called over, he anſwered to the name of Wilſon, and walked aſt. The witneſs was afterwards called before the Privy Council, in order to give them information reſpecting this tranſaction.

Upon his croſs-examination, he ſaid, they got into Breſt upon the 22d; that there was a plan to riſe; he thinks Croſsfield had engaged to be one; Croſsfield was one of thoſe who meſſed in the cabin; and Croſsfield and the reſt that were there were to ſeize the ſhip; he ſaid that there were three priſon ſhips together; the Hope brig, Captain Falconer, he ſaid, had been taken within a day or two after they were taken, and Mr. Cleverton was in her; he ſaid that ſome of their private property was ſaved, nothing of his was inſured; that Captain Clarke might have ſomething inſured; what were ſaved were ſold on board the priſon ſhips; he ſaid he had no words with Croſsfield on that account, nor any quarrel, nor did they converſe much; that his ſtation was the deck, and the Doctor's was below; that he had heard Croſsfield had ſaid it was owing to his negligence that the ſhip was taken; Croſsfield had never ſaid it to him; he ſaid Croſsfield was not removed from the veſſel on account of a quarrel between him and Le Bretton, and there is no evidence of any ſuch thing. He was aſked about the ſtate of their proviſions, he ſaid they had bad proviſions, but with their money they could purchaſe good; he ſaid there was a ſcheme for his obtaining his liberty, by getting a certificate that he was an American, and which Croſsfield was inclined to aſſiſt him in; that Croſsfield meant to get his liberty by inſiſting that he was a naturalized Hollander; and that he wrote to Leyden for the purpoſe of getting the neceſſary evidence to ſupport that pretenſion; he ſaid Croſsfield ſaid he had intereſt enough in France to procure all of them their liberty; he ſaid Croſsfield had a

good

good deal of levity about him, and talked and rattled a good deal.

James Winter deſcribed himſelf to be the owner of the Suſannah, a veſſel from Newfoundland to Spain, on board of which he was with his property, and was captured and carried into Breſt; he was taken upon the 6th of December, and arrived at Breſt upon the 13th, and was on board the priſon ſhip for ſome time; that upon the 20th of March they were put on board a cartel in Landerneau River; that Croſsfield came on board and dined, this was on the 2d or the 3d of April; Captain Yellowly introduced the priſoner by the name of Croſsfield, but the priſoner laughed, and ſaid that his name was not Croſsfield, but Tom Paine; he ſaid that after ſupper he ſung ſeditious ſongs; then he ſaid that he had ſhot at his Majeſty, but unluckily had miſſed him. At another time the witneſs aſked him where it was that he had ſhot at the King, the priſoner ſaid it was between Buckingham Houſe and the Palace; he ſaid that this kind of converſation paſſed every day for five months; the priſoner did not ſay with what weapon he had ſhot at him, but ſaid he would ſhew the witneſs ſomething like a pop-gun, about a foot and a half long, made of iron; he ſaid he had put poiſoned darts into this gun, and had ſhot at a cat, and the cat expired in great agonies in a ſhort time; that he ſaid it would kill a man at thirty yards diſtance, and nobody could ſee that he had done it; that he repeated theſe kind of things fifty times; the witneſs ſaid there were nine of them that dined together; that this ſort of converſation frequently happened; that the priſoner ſhewed him in what manner this arrow was made; he ſaid that when the arrow ſtruck the part it was aimed at, the poiſon would come out of the dart; that Croſsfield ſaid he was the perſon who ordered the poiſon to be made up, and that he got it at a chymiſt's ſhop; that Croſsfield ſaid he had fired at his Majeſty, but did not ſay with the dart, but it was damned unlucky he had miſſed his aim; he ſaid nobody was preſent when he ſhewed the witneſs in what manner this arrow was to act; that it was in a private converſation between them; but he ſaid once in Auguſt, afterwards he corrected himſelf to July, Croſsfield ſaid he hoped he

ſhould

ſhould live to ſee the day when the blood ſhould be over his ancles in the ſtreets of London, of the King and his party; a gentleman preſent ſaid God forbid, matters may be done more eaſy. Then the witneſs went back again to what he had ſtated before, and ſaid, that he went to the chymiſt's himſelf, and ordered the poiſon to be made up, and with that he had killed the cat; he ſaid Croſsfield ſaid that after he had ſhot at his Majeſty, he was obliged to make off to Portſmouth, where he had got on board a South Sea Man; that two of the King's Meſſengers were after him; the witneſs ſaid that Captain Collins wiſhed to have the cutting off the King, and Pitt, and the Parliament; that Croſsfield ſaid have patience, I hope to have the cutting off ſome of them myſelf by and by; he ſaid that on the 27th of Auguſt, when the cartel left Breſt, Croſsfield ſaid every thing is now ſettled to my ſatisfaction; one of the Captains endeavoured to ſtop his mouth, and prevent him from talking, but he ſaid the French had given him great encouragement; that from the 18th or 19th, down to that time, the priſoner had been very cloſe; he ſaid they were three days on their paſſage, and they landed at Mevagiſſey; that nothing paſſed in the courſe of the paſſage material. The witneſs went immediately to a Juſtice of Peace, and gave information; upon that information, he ſaid, a warrant was granted, but before the warrant could be executed the veſſel was gone to Fowey, and there it was the priſoner was apprehended.

Upon his croſs-examination he ſaid, that he was fifty-nine years of age; that he had reſided at Newfoundland; that they were part of the time on board the Berwick, Captain Alexander, nine of them he mentioned, the two Byrons, Collins, and ſeveral others that came over in the cartel; he ſaid he told the Juſtice the names of thoſe perſons, and that they were of the ſociety of Croſsfield; he mentioned their landing at Fowey; he ſaid Croſsfield was apt to drink; that the company that uſed to meſs with them muſt have known of the general converſation, but that he does not think that they knew any thing about the mention that was made of the dart, becauſe that was in private. He was then aſked whether he himſelf had not told a ſtory of a hare, and he gave us ſome particulars of that ſtory;

and

and that certainly raiſes a conſiderable degree of doubt whether this man is perfectly and entirely to be depended upon, in reſpect to his capacity; the ſtory was certainly a fooliſh one, though not abſolutely impoſſible to be true; but he added to it, that there was a notion that the place was troubled, which leads to a ſuſpicion that he himſelf conceived there was ſomething ſupernatural in the event which he related. This would be a ſtrong mark of a diſtempered imagination. You will recollect that a witneſs for the priſoner ſaid, that Winter declared that the hare was a witch or a devil in the ſhape of a hare. That which dropped from this man himſelf, in the courſe of his evidence, concerning the place being troubled, connects very cloſely with what the witneſs related; and the whole, taken together, marks ſo ſtrongly that this man's mind is not perfectly compoſed, that it muſt weigh againſt the credit of his teſtimony, even though there ſhould be no reaſon to doubt but that he means to ſpeak the truth. This man has given very material evidence againſt the priſoner; but it can hardly be thought, having this cloud thrown over it, a ſufficient foundation for a verdict in this important cauſe, between the King and the priſoner at the bar.

Richard Penny, the next witneſs, deſcribes himſelf to be Maſter at Arms of the Daphne; he ſaid that veſſel was taken by the French, and he was put on board the Elizabeth; he ſaid he heard Croſsfield ſinging in his bed a ſong, which occaſioned his aſking him ſome queſtions the next morning, as the ſong wiſhed damnation to a King; he aſked him what King he meant; Croſsfield ſaid the King of England; upon his remonſtrating with him, Croſsfield threatened to have him put in irons, and then he ſaid he was one of the three that attempted to blow a dart at his Majeſty, in Covent Garden; that Tom Paine's works were what he would be governed by, and that if ever he arrived in England, he would attempt the like again; he ſaid that when they were coming into Mevagiſſey, the priſoner ſaid to him, young man, was not you on board the Elizabeth, he anſwered that he was; the priſoner then deſired that he would take no notice of what was ſaid on board the Elizabeth; the witneſs ſaid he mentioned it at Portſmouth, in conſequence of which he

was

was ſent to Plymouth, where he made an information; he ſaid they were captured upon the 22d of September, 1794; that Croſſfield came on board in the month of March, and remained about a month aboard; that he meſſed with Dennis, Captain Clarke, and others; that the meſs conſiſted of ſeven; he ſaid he recollects that on board the Elizabeth, Croſsfield was once in cloſe conference with the French officer.

The next witneſs is Walter Colmer; he is a perſon who was employed to apprehend this priſoner, and to convey him from on board the cartel at Fowey to Bodmin gaol; he ſaid the priſoner was put into a poſt-chaiſe, with another conſtable to attend him, and he ſwears that upon the road the priſoner told him that he would give him and his partner each a guinea to let him go, that they would only get a few ſhillings for carrying him to Bodmin; after that he offered them two guineas each; one aſked him what they ſhould do with the driver, the priſoner ſaid if they would let him have one of their piſtols he would ſoon ſettle that matter; he was aſked whether the priſoner was not in liquor, he ſaid that he might be a little in liquor, but he did not think he was much.

[*The Chief Juſtice being reminded by Mr. Gurney, that Colmer ſaid, that when he aſked for the priſoner, he anſwered to the name of Croſsfield, added,*] I ſhould have ſtated to you that Colmer, in part of his evidence, ſaid that the priſoner, when he was apprehended, anſwered to the name of Croſsfield.

Elizabeth Upton is deſcribed to be the wife of one Thomas Upton; ſhe gave an account of having miſſed her huſband from the 22d of February laſt, when he went out; ſhe ſaid ſhe never ſaw him afterwards, but that his hat was brought home by a waterman; ſhe ſaid he gave her a ſeal before he went out, and ſhe believes, having heard nothing of him, that he is not now alive; ſhe ſaid that he was a ſober man, ſhe never ſaw him diſguiſed in liquor; ſhe knew Croſsfield, ſhe had ſeen him at her huſband's houſe frequently; and alſo Palmer, ſhe has ſeen him there in company with Croſsfield; ſhe ſaid ſhe thought ſhe recollected having ſeen the two models, which are now produced, lying in her huſband's ſhop, at the houſe in Bell-yard; ſhe ſaid

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ſhe had known Hill; that ſomething like thoſe models were brought home by Hill one night; but ſhe has no recollection of having ever ſeen a tube, which was now ſhewn to her, nor the paper which has been produced; ſhe now lives in Gray's Inn Lane.

George Steers lives in Gatwood's Buildings, Hill-ſtreet, Finſbury-ſquare; he ſaid he happened once, though not a member of the Correſponding Society, to be at one of their meetings in the latter end of the year 1794, ſomewhere about the month of Auguſt, there he ſaw Upton, he obſerved Upton was lame; he obſerved that he held ſomething in his hand, at firſt he thought it was a walking-ſtick, but it turned out to be no walking-ſtick; there was a fellow clerk along with him; he aſked Upton what it was, he did not give any anſwer; he aſked for what purpoſe it was intended, Upton ſhewed it him in his hand, he then perceived by the light that it was made of braſs; that the tube, which is now produced, is in appearance the ſame, but he cannot undertake to ſay it is the ſame.

William Henry Puſey ſaid he was with the laſt witneſs at this meeting of the Correſponding Society; that Upton was there; he ſaw under his coat ſomething which reſembled that tube which is now produced; he aſked Upton what it was, Upton pulled it further out, but gave no anſwer, only ſhook his head; that the thing, when produced, did not appear to him to be ſolid.

Edward Stocker, the other conſtable, who was not called immediately after the firſt, ſaid that as they were conveying the priſoner to Bodmin gaol, he offered them a-guinea a-piece, and afterwards two guineas a-piece, to let him go, and ſaid it was better to let him go than to take a little money to carry him to gaol, and that he was man enough for both of them, by which I ſuppoſe he meant that the witneſs might make that excuſe, that he had got away from them by ſuperior force; Colmer aſked him what they were to do with the driver, he anſwered, if you will give me one of your piſtols I'll pop at him, and ſettle the matter; that he could give them a draft on ſome perſon at Fowey; the witneſs aſked whether he knew any inhabitant of Fowey, he ſaid no, he did not know any inhabitant, but it was a perſon in

Fowey,

Fowey, who would anſwer his draft; he cannot ſay that the priſoner appeared to him to be in liquor, but that he afterwards did fall aſleep, and ſlept ſoundly a great part of the way; that they ſet out about nine o'clock in the evening.

Harvey Walklate Mortimer is then called; he is a gunſmith in Fleet-ſtreet, and has been near thirty years in the buſineſs; he has been uſed to the conſtruction of air-guns; he has frequently conſtructed them in the form of a walking-ſtick; he ſays they will not take effect entirely without exploſion but in the open air; when the air has a free current you cannot hear it; in a room it makes a noiſe, like the clapping of a hand; that in a theatre it would make leſs noiſe than in a ſmall room; that it has ſo little recoil, that if you were to hold it before your eye with a glaſs between you would not perceive that it hurt the glaſs, and he ſaid a very accurate aim may be taken; he ſaid the tube of an air-gun might be ſo conſtructed as to diſcharge an arrow. A drawing is produced to him of two arrows, one barbed, the other not; he ſaid the barbed arrow might be ſo conſtructed, that the barbs might collapſe, and ſo be put into this tube, and when forced out again they would regain their poſition; the ſprings muſt be weak, but they would act upon a joint, and, being made weak, they might be preſſed in; he ſays undoubtedly ſuch an arrow might occaſion death; he is ſhewn thoſe two pieces of wood, he ſaid that they certainly might make a cylinder, in the form of the longeſt of thoſe pieces; that the ſmall end of the models mark the ſize of the bore, and that if this was deſigned for a piſton to condenſe the air, it would be to be put on occaſionally upon the air-gun, and he ſays that they might condenſe the air ſufficiently to charge a braſs tube with condenſed air, ſo as to diſcharge an arrow three or four times without re-charging it; he was aſked to look at the paper, and ſee whether he could take upon himſelf to ſay that the models were made from the drawings in that paper, he ſaid he could not take upon himſelf to ſay, from the appearance of the paper, that they were made from thoſe drawings, that without ſomething having been ſaid, he ſhould not have known for what that paper was intended, or what it was to repreſent; he

he ſaid that they make now their air-guns in a neater form than this, in the form of a walking-ſtick; that the recipient for condenſed air may be within the tube, and the condenſer either within or without. He was aſked as to the poſſibility of ſome matter being enclofed in the barb of the arrow, and which, though the arrow was diſcharged, might not be loſt till it ſtruck the object, and then it would part with that matter, he ſaid he believes that an arrow might be ſo conſtructed; he went into a more particular deſcription of his air-gun, which I do not think extremely material, and I did not encourage him to go further into it, becauſe I did not wiſh it ſhould be very particularly taken down to inform the world of that which it is better the world ſhould not know; but he ſaid that which is material to the ſubject of our enquiry, which is, that upon looking at theſe models, he does believe that they are models of part of an air-gun; he ſaid that if he had not ſeen them along with the tube, he ſhould not have been ſo well ſatisfied, but that it is very ſatisfactory to him ſeeing them along with the tube, that that was the purpoſe for which they were conſtructed, but that without the tube it would be his belief that they they were intended as parts of an air-gun. That you ſee is very material, becauſe the very point of the overt act is, that theſe were models of part of the inſtrument, which might be uſed for the purpoſe expreſſed in the overt act, namely, to deſtroy the King.

Mr. Ward was then called; he ſaid that upon the 12th of September, 1794, he ſaw the paper which has been produced, which has a figure of a barbed arrow upon it, in the poſſeſſion of Upton, at Upton's own houſe; and he thinks he ſaw likewiſe the other paper, but he did not ſee the tube. On the Saturday, which was the next day, he went to give information of it; and he ſaw Mr. Pitt upon the Wedneſday following, when the information was given.

Mr. Palmer being again brought up to be aſked a queſtion that was omitted, ſaid that Croſsfield's circumſtances were bad; that his property had been aſſigned for the benefit of his creditors.

Gentlemen, this is the evidence on the part of the profecution.

On the part of the priſoner James Parkinſon was the firſt witneſs called, who deſcribed himſelf to be a ſurgeon and apothecary in Hoxton-ſquare; he ſaid that in Auguſt 1794, he was a member of the Correſponding Society; that Higgins and Smith were members of the General Committee; that enquiries were inſtituted in the Committee by Higgins and Smith, at the requeſt of the Committee of Correſpondence, into the character of Upton, upon a charge of having ſet his houſe on fire; that there was a meeting, at which Upton was preſent: I think this was all that he ſaid upon his original examination.

Upon his croſs-examination, he was aſked whether he had not been at ſome time in poſſeſſion of a paper entitled La Guillotine, or George's Head in a Baſket, he ſaid he had ſuch a paper, but that he did not receive it in the Society; he ſaid he had heard that Le Maitre and Upton were reconciled; he ſaid that he did go to Hill after theſe people were apprehended, to hear all that he could collect, in order to give the Privy Council all the information he could; that he never heard of any quarrel between Upton and Croſsfield, and that Hill expreſſed uneaſineſs about having turned theſe models.

The next witneſs was John Bone, who lives at No. 8, Weſton-ſtreet, Southwark, a muſlin cleaner; he ſaid he was a member of the Correſponding Society in the months of Auguſt and September 1794, and a member of the General Committee; that Le Maitre, Smith, and Higgins were members; and that there were diſputes between them and Upton ſome time after the commencement of Auguſt; that they originated in Upton's bad character; that Higgins and Le Maitre were taken up upon the 27th or the 28th of September; that Smith and Higgins had attacked Upton's character, and there was a great diſpute, with conſiderable violence, between Le Maitre and Upton, he believes that was on the 4th of September; that it threw the whole aſſembly into great agitation; that a letter had been ſent in, reflecting highly upon the Society; that when it was known that it was written by Upton, and he confeſſed it, Le Maitre

was

was very severe upon him; that he called him a man, considering him as unworthy the name of a citizen; he said that Upton threatened to be revenged of Le Maitre; that Le Maitre said to him if he had any thing to settle, it would be better to do it at another time, and he gave him his address; the same evening Higgins moved, in the General Committee, a vote of censure upon Upton, which was discussed, and Upton going towards the door, Higgins said that if they meant to do any thing upon the vote of censure they must be quick, for that he was hopping off; this put Upton into a great rage, and he called Higgins a wretch, for reflecting upon his natural infirmity; that Higgins made answer, perhaps I ought to tell you you lie, but it shall suffice at present to say I did not mean it so; Smith said if Upton's name was kept in the printed list of the Society his name should not continue there; and that the night before these people were apprehended the list was ordered to be published without Upton's name.

John Huttley, a watch-spring maker, in Great Sutton-street, Clerkenwell, said he saw Upton in September 1794; that their conversation turned upon Higgins, Le Maitre, and Smith having been apprehended. Upton said it was their own fault, they had made free with his character.

William Brown said he knew Upton; that in September 1795, he asked him concerning what Crossfield was detained for, Upton said he could not tell; he asked if he knew what was the chief accusation against him, Upton said he did not know; he asked him if he knew Le Maitre, Higgins, and Smith, Upton said yes, too well, they were three damned villains, and had used him in the most villainous manner; that they still continued to hurt his character, and that they had attacked him in the street, calling him an informer, and brought a mob about him, and that if they did not desist he should certainly use some means; he told Upton that he must make some allowance, considering the ill usage he had given them, by laying against them an accusation apparently unfounded, Upton said he was unacquainted with the former part of the story, and that he would relate the whole; that prior to all this business there had been a

ſubſcription for the families of the State priſoners; that ſubſcriptions were received at his houſe as well as at others; that Higgins, Le Maitre, and Smith had accuſed him of being a thief and an incendiary; that the Society had refuſed to give him a fair trial upon it, and that they ſtill continued abuſing him in every public company; the witneſs told him ſuch accuſations as thoſe, in his judgment, could not ariſe from nothing at all; that Upton then ſaid he would tell him what it alluded to; he had once a houſe in Cold Bath Fields, which was burnt down; he was advertiſed, and a reward offered for apprehending him; that he agreed with a friend of his, that his friend ſhould produce him, that they might get the reward, and when they had got the reward the Phœnix Office could make nothing againſt him, and he appealed to the witneſs whether, as he was acquitted in the eye of the law, any man ought publicly to accuſe him. All this goes but a little way, becauſe there is nothing that points directly one way or the other to the queſtion, whether any charge which was brought againſt Le Maitre, Higgins, and Smith was or was not well founded; he only gives the reaſons why he is at enmity with them, and why he thinks they have uſed him ill; and, as far as he was concerned in it, a ſort of apology for his bringing forward a charge which, whether true or falſe, perhaps otherwiſe he might not have done.

John Cleverton ſaid he was a priſoner in Breſt, at the time Croſsfield was there, on board the ſame priſon ſhip, from the 19th of February to early in May; he does not recollect any declaration reſpecting the King, but he has frequently heard Croſsfield ſing Republican ſongs; that he never heard him make any declaration as to any plot there was againſt any body; that there were other Captains of veſſels, Captain Clarke, Captain Bligh, Mr. Dennis, a man of the name of Denton, and Mr. Widdiman, who uſed all to meſs together; he ſaid Croſsfield was a very jolly fellow; that the ſick priſoners were ſent to the hoſpital; he himſelf went to the hoſpital on the 19th of May; that he came over in the ſame cartel with the priſoner; he ſaid he knew that in the month of May the priſoner ſigned his proper name Croſsfield, becauſe he ſigned it to ſome inſtrument of his at his requeſt; they uſed to call him

Doctor;

Doctor; there was no particular intimacy he ſaid between Croſsfield and Dennis, or Le Bretton: the witneſs ſaid that they afterwards landed at Fowey; that to the beſt of his judgment Croſsfield appeared glad that he was got over; he ſaid he himſelf, at the time he was taken, was going to the Canaries, as agent to a houſe in St. John-ſtreet, to collect wines for the Government: he deſcribed Croſsfield as a man who drank hard; he ſaid he does not remember hearing Croſsfield ſay any thing of having ſettled any affairs in France to his ſatisfaction; he does not know neither that he put the name of Wilſon into the liſt, but has heard that he did; there were no quarrels about republican principles; then he is aſked whether a ſong that is ſhewn him was one of the ſongs Croſsfield ſung? he ſaid he never heard him ſing that ſong but once or twice, the chorus in particular, he ſaid, he had a recollection of; that ſong was read. Gentlemen, I ſhall not repeat it to you, it is not at all eſſential to the cauſe, and it were better that ſuch ſongs ſhould have no circulation; a more flagrant ſeditious ſong, aiming more directly at the whole Conſtitution of the Government of this Country, conſiſting of King, Lords, and Commons, could not have been compoſed: it was truly ſaid by Mr. Attorney General, that it was an epitome of every thing that could be imagined to be ſedition; though the name of our King is not in terms mentioned, yet Mr. Cleverton, if he had recollected himſelf, could hardly have thought himſelf juſtified in ſaying that this man had never ſaid any thing reflecting upon the King.

Anthony Collins, the next witneſs, ſaid he was a Captain of one of the priſon ſhips, he explained that by ſaying that they were cartel ſhips that were in the river, and the French converted the cartel ſhips into priſons; he ſaid that he heard there was a medical man on board one of the other ſhips, and therefore he invited him on board his ſhip, and that turned out to be the priſoner Croſsfield; that he conſidered himſelf as much indebted to him for his care and attention in his profeſſion, and he thinks he ſaved the lives of fifty or ſixty people by it; he meſſed in the cabin with him; there were the two Byrons and ſome others; he had not known him before; he ſays, for want of better em-

ployment, they drank too much; he ſolemnly avows he never heard any thing of plots againſt the Government: that the witneſs, Winter, was ſometimes at that meſs, and told ridiculous ſtories, one was the catching the devil in the ſhape of a hare; he took the hare for a devil, and was very much diſpleaſed when they attempted to contradict him; and he ſaid he was the common laughing ſtock on board; he believed he was ſomewhat ſlighty, whether from the loſs of his property (for he underſtood he had loſt a good deal of property) or whether the effect of his impriſonment he could not tell; he walked about in the night talking to himſelf, and ſlept very little; he never had any converſation with Winter about Croſsfield; the witneſs lived moſtly with Croſsfield; he ſaid Croſsfield mentioned the derangement of his circumſtances, but did not mention the occaſion of his leaving England, or whether that was the occaſion; he ſung ſongs, but none of them againſt the Government; he does not recollect any ſuch ſong as that the chorus of which is, "Plant, plant the tree;" he did hear that Croſsfield put his name down in the liſt, when they were to be exchanged, H. Wilſon, it did not ſurprize him at all, having communicated to him the embarraſſment of his circumſtances he aſcribed it to that; he ſaid his conduct was uniformly that of an orderly and good ſubject; that he reprobated the war, and called it an unjuſt war; he ſaid he has often heard him ſay that the Commandant had offered to let him ſtay, and to give him an eſtabliſhment to ſuperintend the hoſpitals, but he declined it, rather wiſhing to be at home, and ſeemed to rejoice in returning home; he ſaid he never ſaw Mr. Cleverton above once or twice, for he was part of the time on board one of the other ſhips, and part of the time at the hoſpital, ſick.

Elizabeth Smith is then called, who is a widow, living at No. 17, Great Hermitage-ſtreet, Wapping, where ſhe has lived for the laſt eight years, having lived in Red Lion-ſtreet for the ſeven preceeding years; ſhe ſaid ſhe has known Croſsfield five years, that he was very often to and fro, that he was a man of levity, but by no means of a harſh and ſevere temper; ſhe knew Captain Clarke of the Pomona, ſhe has known him two years;

years; ſhe had alſo ſeen the witneſs Le Bretton, that he was before the maſt, with Captain Clarke; that he uſed to come to Captain Clarke; ſhe remembered his coming after his return; he told her ſhe might expect Captain Clarke ſoon, for he had been examined at Guildhall, or ſomewhere. Le Bretton ſaid to Captain Clarke, that he had heard Croſsfield deſcribing a gun to him, that he, Clarke, was preſent, which Clarke denied. Le Bretton ſaid, ſeveral times, he hoped he ſhould hang him. Croſsfield, ſhe ſays, lodged with her at three different times, under the name of Croſsfield; that the laſt time he lodged with her was about a month before he went out; ſhe ſays on Chriſtmas day Clarke dined at her houſe, and Croſsfield dined with him; that was the day before Clarke went on board his ſhip; that Croſsfield did not join the ſhip for five weeks after, at Portſmouth; that he went by the name of Croſsfield while at her houſe, and ſhe apprehends he went to the Change, and other different places, with the company in the houſe, particularly Captain White: one day Croſsfield came in when Captain Clarke was ſpeaking to ſome gentleman to recommend him a ſurgeon, and Croſsfield ſaid perhaps he might go with him: ſhe ſaid Croſsfield was a good-natured man, who would hurt nobody: ſhe denies that ſhe ever aſked Le Bretton to be favourable to Croſsfield, and that ſhe never ſaid truth was not to be ſpoken at all times; ſhe ſaid ſhe never ſpoke either to Le Bretton or Dannis in that manner, that ſhe had not ſeen them ſince Le Bretton was about the houſe.

They then call five witneſſes to the priſoner's character.

Mrs. Watſon is the firſt witneſs, ſhe ſaid Croſsfield lodged at her houſe in Dyer's-buildings, that he lodged there by his own name; that he came on the 26th of July 1794, and ſtaid two months; that he kept nothing locked up, that he was a very careleſs kind of man, but behaved extremely well; ſhe never ſaw him afterwards, and no enquiry was ever made about him.

Mrs. Beaſley ſaid, ſhe had known him four years, he had the character of a humane good-natured man.

Mr. Wyld, a ſurgeon, in the Kent road, ſaid, he had known

him three years, and gave him a very good character for his good nature and humanity.

Mr. Wilſon, a ſurveyor, in Dorſet-ſtreet, ſaid he had known him from a child, that he was an exceeding good man, and he never thought he could commit any crime.

Mr. Hepburn, a ſurgeon, in Great Hermitage-ſtreet, ſaid he has known him four years, he had attended the family where Croſsfield lodged, he thought him a light, eaſy, good-natured man.

They then, on the part of the proſecution, called up Thomas Dennis and John Le Bretton, in order to confront Mrs. Smith.

Thomas Dennis ſaid, that Mrs. Smith made enquiries of him what he knew about this charge againſt Croſsfield? and ſhe ſaid, ſhe hoped that he would not declare any thing to hurt him. He ſaid, there were warm diſputes at dinner, that there were three or four Captains of ſhips preſent: ſhe ſaid ſhe would ſay any thing to ſave him; and that Captain Smith, who was preſent, ſaid, Mrs. Smith you ought to be aſhamed of yourſelf to ſay ſuch a thing. He ſaid Captain Clarke, Captain Smith, and a young gentleman that had apartments there, whom he believes to be a wharfinger, were preſent at this time.

John Le Bretton ſaid, that he very well knew Mrs. Smith; that ſhe aſked him what he had ſaid, and ſhe ſaid ſhe hoped he would not ſay any thing to hurt the priſoner; that he told her he ſhould ſpeak the truth, and did not know whether it would hurt him or no; to which ſhe anſwered, that the truth was not always to be ſpoken; ſo that you ſee here ariſes a queſtion, whether Mrs. Smith has materially impeached the credit of Le Bretton, or whether Le Bretton and Dennis together have materially impeached the credit of Mrs. Smith, that is a ſubject which is entirely for the conſideration of the Jury: when you are aſcertaining what is the true ſtate of the facts in evidence, you muſt make up you minds as to that, whether you will conſider Mrs. Smith as having materially impeached the credit of Le Bretton, or whether you think upon the reſult of the evidence Le Bretton and Dennis together have impeached her credit; if it be true that ſhe tampered with theſe witneſſes, and ſaid ſhe would

would ſay any thing for this man to ſave him, inſtead of impeaching the credit of the witneſs, ſhe is herſelf diſcredited: all that I ſhall ſay upon it is, that this man Dennis, who I do not find is impeached at all by her evidence, does aver that it was ſo, and does boldly appeal to perſons who were preſent at the time, who at leaſt hereafter, if not now, might contradict him if he did not ſpeak the truth.

Gentlemen, I have now gone through the evidence; I told you I ſhould firſt recapitulate the evidence, and then endeavour to inform you in what manner this evidence applies to eſtabliſh the whole or any part of the overt acts contained in this indictment, and there appear to me to be two overt acts, or rather two different ſets of overt-acts, varying only as to the deſcription of the inſtrument, one being coupled with the poiſoned arrow, the other not; in other reſpects it is in truth but one ſet of overt acts, they are both of the ſame nature, they both charge a conſpiracy to prepare an inſtrument to deſtroy the King, and they both of them charge the employment of Hill to make models for a part of that inſtrument, and either of them, if they were made out ſatisfactorily, would certainly be ſufficient to ſupport this indictment.

Firſt then, you are to conſider whether there is any evidence before you of this conſpiracy to procure the inſtrument deſcribed to be made, being deſcribed two different ways.

You are next to conſider if you are ſatisfied that there was a conſpiracy in which this priſoner was involved to prepare ſuch an inſtrument? Whether the purpoſe for which it was to be prepared is ſufficiently aſcertained by the evidence.

Thus far is clear, that three people, of whom one was by the poſitive evidence of Palmer fixed to be the priſoner Croſsfield, did go, upon the day mentioned by the witneſſes, I think one of them ſaid the fourth of September, to three different braſs-founders, and did there apply to have a braſs tube made, of a particular deſcription, which they gave when they went to the firſt man; and though they deſired to have a cylinder very correct, and very exact; yet they did not think fit to diſcloſe the occaſion for which they wanted this cylinder, in which there is certainly

tainly an air of myſtery. It appears that when they were at another braſs-founder's, they ſaid that it was wanted for ſomething belonging to an electrifying machine belonging to Upton; if it had really been wanted for that purpoſe, one can hardly ſee a good reaſon why there ſhould be any ſecrecy when they were at the firſt braſs-founder's.

It appears too, that three perſons, one of whom is ſworn to be Croſsfield (the lame man, Upton, is, I think, ſpoken to by all of them) went afterwards to Hill's, to get a model made for part of ſomething; perhaps when you compare that part of the evidence with the evidence ariſing from the application to one of the braſs-founder's, it may be explained how they came to apply for this wooden model; you recollect one of the braſs-founder's ſaid, he could not undertake to make it unleſs they would produce him a model, or a pattern; they aſked him whether a rocket caſe would not do? he ſaid it might do if it was cloſed at the ends; whether that would or not have done I do not know, but they did not agree there, and the queſtion is whether that did not ſuggeſt the hint for getting ſomething done in wood from whence the braſs-work might be caſt, which was afterwards to be made uſe of? three perſons went upon this errand; there is a queſtion in the evidence whether Croſsfield ought to be taken to be conſenting to what was done at that time, ſuppoſing he was there; and the witneſs, Palmer, has certainly introduced circumſtances to render it doubtful, though all theſe three perſons were preſent, whether more than one of them took any part, for he would have you to underſtand that it was an accidental meeting of the three; that Croſsfield and he were dining together, that they went to Upton's only for the ſake of his getting his watch, and that it was merely by accident, they being going into the city, that they walked with Upton; and perhaps the ſituation of the different places they went to may in ſome meaſure correſpond with that, for they ſeem to have begun in New-ſtreet, then to have gone to Shoe-lane, and then to Cock-lane, which ſeems to be all in one direction.

On the other hand, though Palmer has ſaid this, there certainly are circumſtances fit for your conſideration, to fix if not upon Palmer,

Palmer, at leaſt upon the other two, the having a good deal to do with the tranſactions at theſe braſs-founders, and particularly at Hill's; one of the braſs-founders told you that one of the men, who could not be Palmer, for he diſavows it, and who was not the lame man, aſked in what time the thing would be finiſhed, which could be nothing to him, unleſs he had ſomething to do with the general purpoſe for which they went there; and as to the tranſaction at Hill's, both Hill and Palmer ſay that this man, who turns out now according to the evidence of Palmer to be Croſsfield, did take ſome part in making the ſketch by which Hill was to work; now that ſeems very inconſiſtent with the notion that it was purely an accidental meeting, and that they were there only as companions to Upton, who was doing his own buſineſs, without any participation whatever with them in that buſineſs; to be ſure it is not abſolutely impoſſible that when an aukward ſketch was making, a man who was not immediately concerned in it might take a pen and make a ſtroke; however, it is a circumſtance that is to be weighed in the caſe upon the whole of the evidence, as tending to ſhew that theſe three perſons were at all theſe places for the purpoſe of procuring, firſt of all, this braſs cylinder to be made; and in the next place procuring the model to be made, from whence a braſs cylinder was to be made by ſome other perſon.

Suppoſing you ſee reaſon to believe that this priſoner was conſenting to that which was doing at theſe houſes, principally by Upton, that he was there conſenting to it, and taking part in it; the conſequence would be that then there would be evidence for your conſideration to prove that there was an agreement by the priſoner among others, for the procuring an inſtrument to be made, which conſtitutes a part of one of the overt acts; and that there was by the priſoner, as well as by others, an actual employment of Hill to make a part of this inſtrument; another, and the moſt material part of the overt act is the purpoſe for which it was to be made; the whole of the overt act muſt be proved, and the evidence will or will not amount to ſuch proof, as it ſhall or ſhall not turn out to your ſatisfaction, that the purpoſe for which this inſtrument was to be made was to aſſaſſinate the King; as to which

which this part of the evidence has no application; you are referred therefore to declarations which have been made by this priſoner when he was out of this Country, when a priſoner on board a priſon-ſhip, as evidence ſufficient to ſatisfy you for what purpoſe he had agreed with the others to get this inſtrument prepared, and to get Hill to execute the model.

The evidence that you have heard, is from four different witneſſes; John Le Bretton, Thomas Dennis, James Winter, and Richard Penny. It has been obſerved with great truth that the accounts are not uniform, that ſometimes he ſpoke of having attempted to aſſaſſinate the King, at other times of having invented an inſtrument for the purpoſe of aſſaſſinating the King, at other times of having actually ſhot at the King, and of an intention to ſhoot at him; theſe declarations unqueſtionably are not uniform, they are alſo open to the objection that they are very extravagant in their nature, probably ſome of them falſe; that it would be exceſſively abſurd in a man in the ſituation of the priſoner to uſe ſuch expreſſions, if he were guilty; almoſt as abſurd as to uſe them, if he was not guilty; and it would be very difficult to imagine that he ſhould do that. They aſſiſt that obſervation by what is very fairly argued for the priſoner; that a man of a light wild caſt, ſubject to be intoxicated, a talking rattling man, if he did ſay any thing of this ſort, would hardly be ſuppoſed to be ſerious in what he ſaid, or mean to expoſe himſelf to a charge of ſo heavy a nature, as that which theſe declarations will import. You will be diſpoſed to give a great deal of weight to the obſervation which ariſes upon the nature of thoſe declarations; on the other hand, undoubtedly there is a moſt remarkable coincidence in every one of theſe declarations, with reſpect to the nature of the inſtrument which he talks of, and the manner in which it was to be uſed; for the accounts given by all the four witneſſes ſpeak of a dart to be blown through a tube, and the uſe of it to be as expreſſed in theſe declarations, for the purpoſe of aſſaſſinating the King.

A man may have a bad habit of talking very wildly and extravagantly, but to account for theſe declarations without imputing guilt, there muſt be an impreſſion upon the mind of the priſoner

priſoner almoſt to inſanity; otherwiſe, how is it to be believed that he, an innocent man, ſhould always recur to this, that this ſhould always make a part of, or be referred to in theſe declarations, that there was an air-gun he had invented, which was to operate by the means of throwing a dart by the effect of condenſed or inflammable air.

Gentlemen, thoſe declarations have been as it ſeems to me improperly called confeſſions, they are not properly confeſſions which import a particular charge firſt made, and an acknowledgment of that charge; they are declarations made by the priſoner at different times, upon different occaſions; which declarations referring to former exiſting facts, are the explanation and connection of thoſe facts, which ſerve to make thoſe facts intelligible; whatever queſtion may have ariſen at any time reſpecting the admiſſion of confeſſions in High Treaſon, I take it that there never was a queſtion made whether when facts had been ſtated, the explanation of thoſe facts might not be taken from the mouth of the priſoner. According to the rules of evidence what a priſoner has ſaid reſpecting a particular fact is admiſſible evidence, not in the nature of a confeſſion, but as evidence of the particular fact; and that it is therefore agreeable to the general law of evidence to receive ſuch declarations in all caſes whatever, in order to explain and to eſtabliſh the true ſtate of any matter of fact which is in diſpute, or the ſubject of enquiry before a Jury; as far, therefore, as regards the admitting theſe declarations of this priſoner as evidence for your conſideration; I have no doubt in ſtating it to you as my opinion in point of law; if my Brother and Mr. Recorder ſee any reaſon to heſitate upon it, they will give you their opinion; but I ſee no reaſon to doubt, but that all theſe declarations are good evidence in law, in order to explain the facts that had been before ſtated, and to give them their proper ſenſe and their proper bearing; and the only queſtion will be as to the effect of them, and whether they do or do not ſufficiently ſatisfy you, (it being firſt eſtabliſhed to your ſatisfaction that this priſoner was one of thoſe who was concerned in going to theſe people, and uſing the means to get an inſtrument prepared, both by enquiry for a cylinder, and alſo by beſpeaking

beſpeaking a model) I ſay, whether they do or do not ſufficiently ſatisfy you for what purpoſe that cylinder was procured, and for what purpoſe thoſe parts of that inſtrument were ordered to be made; whether for the purpoſe, that when the inſtrument was completed, it ſhould be uſed for the dangerous and traitorous purpoſe imputed by the preſent indictment.

Gentlemen, this is to be inferred principally from the ſubſtance of the evidence of the priſoner's declarations; but on the part of the proſecution they have alſo endeavoured to ſtrengthen that inference, by ſhewing you in evidence, what the conduct of the priſoner has been; and they ſay, and they ſay truly, if they make out that the conduct of the priſoner has been, that he has either originally withdrawn himſelf from juſtice, or that he has taken pains to ſecrete himſelf from juſtice, after he was apprehended; that thoſe are circumſtances which do at leaſt infer a conſciouſneſs of very great guilt, and if there be no other reaſon aſſigned for the conduct of the party, very much corroborating and ſupporting the charge of the particular guilt that is imputed to him.

You have heard a great number of obſervations upon the particular parts of the evidence, as to the priſoner's conduct, reſpecting his originally withdrawing himſelf from this Country; it will be a point for you to ſatisfy yourſelves about, whether he did withdraw from this Country under the apprehenſions of being involved in this charge, or whether he withdrew from this Country merely on account of the preſſure of his circumſtances; they conclude on the part of the proſecution, that he withdrew from this Country on account of this charge, and they do it upon the ground principally of Palmer's evidence. Palmer having repreſented that he and Croſsfield went away to Briſtol ſoon after Le Maitre and Higgins were taken up, and that though they returned again, he never returned to his old lodgings, but went to Wapping; and that he kept the place where he lodged a ſecret, even from Palmer, which is a circumſtance that is a little difficult to account for, conſidering the intimacy he admits to ſubſiſt between them, conſidering that Palmer communicated to Croſsfield that the Privy Council had made enquiry after him, and that he had undertaken to produce him before the Privy Council, and he

knew that Crosfield did not chuse to go before the Privy Council; they infer that the true reason for his not going to his former lodging was because he wished to secrete himself; that the true reason for his going afterwards on board the ship was because he wished to get out of the reach of the Privy Council; the circumstance of Palmer not knowing where he lodged, can hardly be accounted for in any other way, than by Palmer's not wishing to know it; to be sure if he had known it, it would be more difficult to avoid those enquiries that might be made after Crosfield, he having undertaken to produce him.

On the other hand, opposed to this, is the account given on the part of the prisoner by his witnesses, that in truth he originally withdrew from London only in order to settle at Bristol if it should appear eligible; that he came back to London and lived publicly at Wapping, using no means to conceal himself, till an opportunity offered by accident of going on board Captain Clarke's ship, and that he went on board because he could not stay in this Country, having been obliged to assign the whole of his property for the benefit of his creditors. The fact, with respect to that, depends partly upon the credit due to Palmer's evidence, and more especially to Mrs. Smith's evidence, because she took upon herself to say, that Captain Clarke mentioned his wanting a surgeon in the presence of Crosfield, and that Crosfield said perhaps he might go with him—the credit of Mrs. Smith will depend upon whether you think she is a fair witness speaking the truth, or whether you think she comes under that bias imputed by Dennis in particular, and the other witness, that she comes resolved to say whatever she could for the benefit of this man; that is a point entirely for you to settle; if this man withdrew from the danger that he thought himself in of being apprehended under this charge, that is a strong corroboration of all the rest of the evidence. On the other hand, if he withdrew from the mere pressure of his circumstances, he will avoid all the inferences that have been made from his conduct in that particular. Then as to the rest of his conduct, he appears by the evidence of one of his own witnesses, when he was on board the prison-ships, to have been a man of dangerous principles by the language he held,

held, by the republican ſongs which he ſung, and, above all, by that republican ſong which is laid before you. Gentlemen, it would not be fair, in point of argument (and in times like theſe we feel the full force of the objection), to draw a particular concluſion in proof of a particular offence, from a man's being tainted with ſuch unhappy principles; therefore, upon this evidence I lay very little ſtreſs. Upon the whole of the evidence of the priſoner's general conduct while he was abroad, it does not appear to me to afford any anſwer to this charge. When it is urged to be a ſtrong corroboration of it, perhaps it hardly goes quite to that length, being, in the reſult of it rather evidence of character, than of matter of fact referable to this charge. When the priſoner returned to England, and when he was apprehended in conſequence of Winter's information, his conduct ſeems to be more difficult to be reconciled with his innocence, and there is no contrariety in the evidence with reſpect to that, for it is eſtabliſhed againſt him that he would have bribed an officer to have let him go; and he talked in a way which leads one to ſuppoſe that he would not have heſitated to have done ſomething worſe, in order to have got out of the cuſtody he was then in.

This cannot be accounted for by ſuppoſing he was under any apprehenſion of being ſent to gaol by his creditors, for there was no reaſon to ſuppoſe this was a charge made againſt him by creditors; on the other hand, the circumſtances plainly denoted he was under a charge of a very different nature. Conſtables, not a common officer, came for him by the name of Croſsfield; he certainly anſwered to the name of Croſsfield; it would have been vain indeed to deny his name at that time. Under thoſe circumſtances, he made that offer, which certainly is imputable to him as evidence of a conſciouſneſs of very great guilt; whether it applies directly to the ſupport of this charge againſt him which is now under your conſideration is for your judgment.

Gentlemen, conſidering the declarations of the priſoner as evidence ſufficient in its nature to prove the uſe and application of the inſtruments that were propoſed to be made, I am of opinion that, upon the whole caſe before you, there is evidence proper

proper to be ſubmitted to your conſideration to prove the two overt acts to which I have applied the evidence on this indictment. Though I ſtate to you that there is evidence for your conſideration, it would not be for me, after having heard his defence and commented upon it, to ſtate, that the evidence is ſufficient to ſatisfy your conſciences—that is your buſineſs; I only ſay, that in law the evidence will be ſufficient to be left to your conſideration to prove the overt acts, unleſs he gives a ſufficient anſwer. Now, then the queſtion will be, what anſwer the priſoner has made: he has anſwered partly by very able obſervations from his Counſel, partly by evidence. The learned Counſel who opened his caſe told you, that he brought with him into this cauſe no other duties than thoſe of the advocate—I think he did not do himſelf juſtice when he ſaid that, for I think, from his manner of treating the ſubject, he brought with him the duties of a good ſubject and of a good citizen; one whom nothing could tempt to endeavour to ſap the foundations of the law and the Conſtitution of the Country under which we live: he admitted diſtinctly that the only queſtion was, whether the parties were guilty of the fact—whether any of the overt acts were ſufficiently proved. To the firſt and moſt general obſervation made for the priſoner, that as the crime is enormous, and dreadfully enormous indeed it is, ſo the proof ought to be clear, I moſt cordially ſubſcribe.

As to the particular obſervations that were made upon particular detached parts of the evidence, I ſhall leave them to your conſideration with only one obſervation upon them, which is, that obſervations upon detached parts of evidence can ſeldom go for much, becauſe the fact that reſults is not from any one particular piece of evidence, but it is from the whole evidence taken together—from the chain of circumſtances which a great number of facts given in evidence do ultimately form; from thence moſt frequently the fact reſults which is the material proof in the cauſe, it is very rarely the reſult of any one particular piece of evidence, and therefore I cannot admit that it can properly be ſaid that any thing which paſſed at the firſt braſs-founder's, and at the ſecond, and ſo on, conveyed no proof; it certainly did

convey proof which was material, but only material becauſe it was a link in the chain which was afterwards to be formed, upon which the general reſult was to be taken. You have certainly been addreſſed with a great many very proper and weighty conſiderations upon the nature of the declarations, of the confeſſions as they were called, of the priſoner; you have heard them, and will give them all the weight they deſerve. I am inclined to go as far as I poſſibly can, with reſpect to all poſſible allowances that can be made for ſuch declarations as are here given in evidence, allowing for the poſſible miſtake of the party who made theſe declarations in point of language and expreſſion, and allowing for miſtake in point of apprehenſion of the party who hears the declaration; with all theſe allowances ſtill the queſtion will be, whether, in reſpect of the coincidence which I have obſerved upon, you can explain the whole of theſe declarations, and avoid making the concluſion from them, that this man did diſtinctly acknowledge that he was one of the three that had contrived an inſtrument which was to be employed for the purpoſe of aſſaſſinating the King. If you are of opinion that theſe declarations, upon the ſtrength of the obſervation made by the Counſel, have not ſufficient weight in your minds, and do not ſatisfy your conſciences, of courſe, without going further, there would be an end of this caſe; becauſe, undoubtedly, the caſe reſts both upon the credit and upon the effect of thoſe declarations made by the priſoner: if the obſervations made by the Counſel ſhould not have ſufficiently explained away theſe declarations, you will then conſider how far the facts laid before you in evidence on the part of the priſoner will aſſiſt theſe obſervations, or will defeat the effect of this evidence.

They begin by calling to you witneſſes to prove that the whole of this charge originated in malice, conceived by one Upton, who is not here, againſt Higgins, Le Maitre, and Smith, in conſequence of a quarrel that they had in a club, which they called the London Correſponding Society; and they have certainly given evidence that there was a quarrel, which proceeded to a conſiderable length; it is enough, without going into the particulars of it, to ſtate that there was ſuch a quarrel;

but the difficulty in this part of the caſe is, ſuppoſing that this was clearly eſtabliſhed, and let it have what weight it will when thoſe perſons with whom this man is proved to have quarrelled ſhall come before a Jury to be tried, what application can it have to the preſent caſe? becauſe, if you are to ſuppoſe this whole charge originated in that quarrel, what is to become of all thoſe circumſtances which have an immediate application to the priſoner Croſsfield, with whom Upton has not quarrelled. Recollect the obſervation which was made by the Attorney General, and which does bear directly againſt this priſoner, becauſe with him there was no quarrel, that it would be the ſtrangeſt thing in the world if all theſe circumſtances, which are in evidence againſt Croſsfield, ſhould have happened by accident, Croſsfield having no manner of implication in the buſineſs; and that he ſhould have made any of theſe declarations which are in evidence, when in truth there was no bottom at all to any part of the caſe —when this whole buſineſs originated in a quarrel between other people: if the caſe were otherwiſe, and there was really a foundation for the charge, but the charge had firſt been brought againſt Higgins, Le Maitre, and Smith, in conſequence of a quarrel, that would make the whole caſe intelligible. The Attorney General's obſervations certainly deſerve weight; for it might be, that though Upton brought forward this charge in order to vent his malice againſt theſe people, yet that it was a charge founded in fact, in which this priſoner was implicated: how to reconcile it to that which is now ſuggeſted, that it is all invention, is to me, I confeſs, totally impoſſible; if you can do it, he will have the advantage of it.

For the purpoſe of explaining the conduct of Croſsfield at Breſt, and in his paſſage home, they have called two witneſſes, of the name of Cleverton and Collins. I feel it difficult to ſtate to you any direct reſult from that evidence; in truth, the two witneſſes do not agree in their repreſentation of this man's conduct:—Cleverton admits him to have gone ſtrange lengths, though he never happened to hear any of thoſe things which the other people have charged him with having ſaid; Collins, on the other hand, repreſents him as an orderly decent man, diſcover-

ing no enmity, no averſion to the Government, ſimply blaming the war, and he certainly ſpeaks of him handſomely in other parts of his conduct, at the ſame time that he was in his private character light, apt to drink and to rattle, but upon the whole he deſcribes him as an innocent ſubject, and as a man in ſome reſpects of great merit: theſe two witneſſes, therefore, differing a good deal in their teſtimony, it is difficult to draw any particular reſult from their evidence applicable to this caſe; the utmoſt that can be made of it is, that ſometimes, in ſome companies, he did ſing republican ſongs, in others he did not—that in ſome places he was reſerved and careful of his conduct, in others not ſo. There this muſt reſt, except as to the effect of what I conſider as a very good character given of him by Mr. Collins.

I have already obſerved to you upon the evidence of Mrs. Smith, and upon the evidence of Mr. Palmer, whoſe evidence has been uſed for the priſoner, to conſtitute a defence upon that part of the caſe which reſpects the probability of this man's having fled for it, when the accuſation againſt Le Maitre, Higgins, and Smith was made. I do not think I can add any thing, therefore you will judge of it; I mention it now only as being a part of the defence, you will conſider what effect it ought to have.

They then proceeded to eſtabliſh the character of this priſoner, which is certainly a proper head of evidence, ſometimes extremely uſeful, ſometimes of weight enough almoſt to weigh down any thing that can be ſaid againſt a man. With regard to this perſon's character, they do not carry it a great way; they repreſent him as a light man, a man of levity of manners, very careleſs, apt to drink, and diſtreſſed in his circumſtances, but good-natured, humane, and as they think not likely to do an ill thing. And I think it right to add here Collins's account, which I think goes as much in favour of his character as any part of the evidence; becauſe a man who will in ſuch a ſituation as he and every Engliſh priſoner were in, when requeſted, come on board a ſick-ſhip, and devote his time and attention to the care of a crew who were not able to pay him, and will take upon him a ſevere duty, and be thereby the means of ſaving a great

great many lives, has in that respect a great deal of merit; and, indeed, such a character as they describe him to be of, in other respects, is a character which leads one to be surprised that a man of that description should enter into such a conspiracy as this is, for undoubtedly it is the conspiracy of dark and malignant minds, and very unlike that of a man of the character which they prove him to bear. I can only say with respect to this, that in some cases good habits, manners, and principles are tainted and corrupted by circumstances; and I am afraid that nothing has done more towards corrupting them than the effusion of modern political principles, which have unsettled men's minds, and have prepared them to conceive that new duties belong to them, and to entertain but loose notions of the means by which the speculative good that they propose to effect may be brought about; whether any such circumstances have entered into this business or no I do not know; this man was in a situation, certainly, to be deeply tinctured with republican notions; and they could not be carried into the excess into which they are carried in that long—that execrable composition, which was laid before you—without a dereliction of all principle, without a man's having by degrees prepared himself to become, from a humane, tender, good-hearted man, capable of doing friendly offices, and bearing his part in the society in which he lives—to become a downright monster—not a citizen, not a man, but, I repeat, a downright monster.

Gentlemen, I shall have discharged my duty when I have told you, that the evidence, which is before you, is evidence proper for your consideration, as proof of these overt acts. I should think you would be disposed, principally to confine your attention to the overt act, as to the instrument last described in the indictment; my reason for thinking so is this, because, if I recollect right, there is but one witness that speaks of this instrument to be put in operation for the purpose of throwing a poisoned dart, and that witness is Winter. Now, independent of all objection which might arise from there being but one witness to this fact, there certainly are some exceptions to Winter's testimony; and if it stands alone, with regard to the circum-

ſtance of the poiſoned dart, it would be a difficult thing, perhaps, for you to ſatisfy yourſelves to rely upon his evidence as to that part of the caſe; but the inſtrument more generally deſcribed remains the ſubſtance of another overt act, proved by other witneſſes as well as by Winter, upon which, therefore, it ſeems to me that it would be the ſafer courſe for you to proceed. The obſervation was fair with regard to Winter, that though he might be a very ſlighty man, yet that he muſt have received ſome impreſſion from what paſſed between him and Croſsfield, importing ſome charge againſt Croſsfield, of a very criminal nature, from the circumſtance that he immediately, on his coming on ſhore, went and gave information before a Juſtice, and that circumſtance is corroborative, at leaſt, of the evidence of the other witneſſes, though it may not be ſufficient to entitle him, on account of the natural infirmity belonging to him, to full and entire credit, for the whole evidence he has given, and, I think, it would not be right to preſs his evidence much further. I conclude, therefore, what I have to offer to your conſideration by ſtating to you, that in conſideration of law, the train of evidence, which has been laid before you, is ſufficient to be ſubmitted to your judgment as proof, by two ſufficient witneſſes, of theſe two overt acts the conſpiring to prepare an inſtrument, not particularly deſcribed for the purpoſe of deſtroying the King; and the having employed Hill to make a model for a part of ſuch inſtrument.

With regard to the weight of the evidence as ſufficient, or not ſufficient to ſatisfy your judgment as to the truth of it, and as to the entire effect of it, that is excluſively your province, and I have never an inclination to interfere with the province of a Jury, upon any ſubject, and leaſt of all upon a ſubject of this nature, in which the intereſts of the public are ſo deeply involved, and in which the life of an individual is concerned, it is a ſacred truſt repoſed in you. And now, Gentlemen, after having heard all that can be ſaid upon this ſubject, it is your province to make true deliverance between our Sovereign Lord the King, and this priſoner at the bar.

The

The Jury withdrew at ſix o'clock to conſider of their verdict, they returned into Court, twenty minutes before eight, with a verdict of

NOT GUILTY.

The priſoner was immediately diſcharged.

THURSDAY, MAY 19th, 1796.

Paul Thomas Le Maitre, John Smith, and George Higgins, were ſet to the bar.

The firſt twelve Gentlemen in the pannel, who appeared, were ſworn the Jury; when the Clerk of Arraigns charged the Jury with the priſoners in the uſual form.

MR. ATTORNEY GENERAL.

Gentlemen of the Jury,

In the diſcharge of my official duty I felt myſelf bound, under the then circumſtances of the caſe, to lay before a Grand Jury of the Country, an indictment againſt the priſoners at the bar for High Treaſon. The law has ordained that no man ſhall be indicted, or tried for that offence, unleſs there are two witneſſes to an overt act, or one witneſs to one overt act, and one witneſs to another overt act, of the ſame ſpecies of Treaſon.

I had occaſion to lay before a Jury a caſe againſt a perſon, who was indicted, together with thoſe now at the bar. Upon that trial I ſtated what I believed to be a fact, which had been very nicely examined into, that a perſon of the name of Upton was dead. In conſequence of a conviction that he was ſo, I ſtated to that Jury, that it was not in my power to produce him.

In the courſe of that trial ſome ſuggeſtion was made, that that perſon was living, in conſequence of which I have thought it my duty to enquire further into the ſubject. It is impoſſible for me to ſay, that contrivance may not elude the moſt diligent, and the beſt conducted enquiry; but I am ſatisfied, as well as I can be of any ſuch fact, that that man is not in exiſtence: being ſo ſatisfied, the law informs me, that the priſoners ought not to be put on their trial, and that they ought not to be put in jeopardy, unleſs there be that quantity of evidence, which is required by law in this ſort of caſe.—It is, therefore, my duty not to give you the trouble of hearing inſufficient evidence, and the priſoners at the bar are therefore entitled to that acquittal, which, in conſideration of law will make them innocent.

At the ſame time I am bound to ſay, that if it ſhall hereafter appear that thoſe, who have come forward in the moſt ſolemn manner to induce the belief of that man's death, have practiſed an impoſition, and have deprived the Country of the benefit of that man's teſtimony; and the perſon, who has been tried, and thoſe, who now ſtand upon their deliverance, of an opportunity of meeting it, I ſhall hold myſelf bound, if I continue in the office, which I at preſent unworthily fill, to bring thoſe perſons to condign puniſhment.

The Jury found the priſoners NOT GUILTY—*and they were immediately diſcharged.*

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